

SENATE CAMPAIGN FINANCE PROPOSALS OF 1987

HEARINGS BEFORE THE COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE ONE HUNDREDTH CONGRESS FIRST SESSION

ON

S. 2

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO PROVIDE FOR A VOLUNTARY SYSTEM OF SPENDING LIMITS AND PARTIAL PUBLIC FINANCING OF SENATE GENERAL ELECTION CAMPAIGNS, TO LIMIT CONTRIBUTIONS BY MULTICANDIDATE POLITICAL COMMITTEES, AND FOR OTHER PURPOSES

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TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO PROVIDE FOR THE PUBLIC FINANCING OF SENATE GENERAL ELECTION CAMPAIGNS

S. 207

TO PROVIDE FOR PARTIAL PUBLIC FINANCING OF GENERAL ELECTIONS FOR CANDIDATES IN CAMPAIGNS FOR THE UNITED STATES SENATE, AND FOR OTHER PURPOSES

S. 615

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TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO BETTER INFORM THE ELECTORATE IN ELECTIONS FOR THE OFFICE OF SENATOR OR REPRESENTATIVE IN THE U.S. CONGRESS

MARCH 5 AND 18, APRIL 22 AND 23, 1987

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SENATE CAMPAIGN FINANCE PROPOSALS OF 1987

THURSDAY, MARCH 5, 1987

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:38 a.m. in room 301 of the Russell Senate Office Building, Hon. Wendell H. Ford, chairman, presiding.

Present: Senators Ford, Byrd, DeConcini, Gore, Adams, Stevens, Helms, and Warner.

Staff present: James O. King, staff director; William McW. Cochran, senior adviser; Gerald W. Siegel, chief counsel; Gail S. Martin, chief clerk; Wayne A. Schley, minority staff director; William B. Canfield III, minority chief counsel; John K. Swearingen, director, technical services; Carole J. Blessington, assistant chief clerk; Gerald Gereau, chief investigator; John L. Sousa, elections counsel; Constance H. Friedman, staff assistant; Byron F. Hoover, staff assistant; John R. Moremen, staff assistant.

The CHAIRMAN. This Committee hearing will come to order. This morning the Committee on Rules and Administration meets to receive testimony on pending—and I underscore pending—bills that could affect the manner in which Senate campaigns are financed in the future. These proposals reflect a general concern that something is seriously wrong with the ways political campaigns have been financed and that a growing number of Members feel that at least some change is desirable.

This general concern is underscored by an examination of the figures on campaign spending during the last campaign. Spending has increased to the point that the four candidates in the two most costly races in 1986 spent almost as much as did all 66 candidates in the 1976 Senate elections. In just 2 years, the spending on Senate races increased almost 30 percent, from \$143 million in 1984 to \$182 million in 1986.

Senate campaign spending continues on its upward spiral.

During hearings after the 1984 election, one witness, commenting on the year's most expensive Senate race, suggested that the higher voter turnout was related to the great amount spent on the race. That theory was disproved in this last election. In fact, just the opposite occurred—voter turnout in 1986 was one of the lowest in the past two decades, and I think probably the third lowest percentage in the history of voting in this country. The voter "turn-off" in this country, in my opinion, is a national disgrace. As a can-

didate last year, I heard what the voters of my state had to say about campaigns. They were more upset over the negative campaigning than they were over the spending. While campaign spending may be a factor in turning off the voters, in my opinion there is another major factor—and that is the negative nature of the campaigns themselves. The constituents were saying, "A pox on both their houses!"

I would hope, therefore, that any legislation reported by this Committee will be comprehensive and address both of these important issues—the increase in campaign spending and the negative nature of campaigns.

This hearing will be continued after today and we will reconvene on March 18th. Following that day of testimony from Senators, there will be a series of hearings to give interested parties and the public an opportunity to present their views on the issues.

I've had the opportunity to work with the distinguished Ranking Member on the Committee, and nothing could please me more than to have this association. And I'm very pleased this morning to ask Senator Stevens from Alaska if he has any comment before we hear the witnesses.

Senator STEVENS. Thank you, Mr. Chairman. I'm pleased to be here with my good friend, Robert Byrd, who is here to give us his point of view about these matters. I think we should focus on one goal that I think we all share, and that's to assure that all congressional elections are conducted in the most open and under the most responsible system possible. I believe that the Federal Election Campaign Act can be improved. For example, I think the area of the disclosure of so-called "soft money" contributions and expenditure needs a great deal of oversight. I think we have to remember that the Act has been subject to amendments in 1974, in 1976, and in 1979. On each occasion Congress intended to address many of the same issues we are attempting to confront today.

This Act and its numerous amendments really give new meaning to what my staff calls the "law of unintended consequences." Whenever one provision of the Act has been modified to address a perceived problem, that modification has led to the development of other, unexpected areas of concern. And we should remember that the political action committees themselves were nothing more than an outgrowth of the restriction in the Act against corporate and labor union contributions. I hope we will not repeat the mistakes of the past, amending this Act in a piecemeal fashion.

I'm prepared to work with you, Mr. Chairman, to devise a sensible approach. I would hope that one of the outgrowths of this hearing might be that we will create a bipartisan commission which will get some of the basic data I think it's not possible really to gather in hearings like this, and see if we can, for the first time since 1971, have a total bipartisan, and I really think a nonpartisan, review of the Act itself.

I do want to say that I think we've got to find a way to continue to encourage voluntary political campaign contributions. I'm not prepared to support public spending, public financing, of campaigns to the extent that it has been suggested so far.

[The prepared statement of Senator Stevens follows:]

OPENING STATEMENT OF TED STEVENS, RANKING MEMBER, COMMITTEE ON RULES AND
ADMINISTRATION

I urge that we focus on the one goal I feel we all share—to assure that all Congressional elections are conducted in the most open and responsible system possible.

This Act can be improved. For example, the area of the disclosure of so-called "soft money" contributions and expenditures needs oversight. However, this Act has been the subject of substantial amendments in 1974, 1976, and again in 1979, each of which was intended by Congress to address many of the very same issues which we will be confronting again today. The Campaign Act and its numerous amendments have given new meaning to the definition of the "law of unintended consequences". Whenever one provision of the Act has been modified to address a perceived problem, that modification has led to the development of another, unexpected area of concern. My colleagues will remember that Political Action Committees are nothing more than an outgrowth to the restriction in the Act on corporate and labor union political contributions.

We should not repeat the mistakes of the past, amending the Campaign Act in a piece-meal fashion. The sensible approach would be to call for the creation of a "blue ribbon" commission of legal, political science and general public members to review the Act and all experience since its creation in 1971. Such a comprehensive review, which has not occurred in the seventeen years since the FECA was adopted, would give us the resource data needed for our deliberations on proposed changes to this statute.

In closing, Mr. Chairman, my view is that the best and most effective method for regulating campaign financing is a system which encourages voluntary contributions, coupled with the full public disclosure of all receipts and expenditures by candidates and campaign committees.

The CHAIRMAN. Thank you, Senator Stevens. Senator Warner, do you have an opening statement?

Senator WARNER. No, I'm just delighted to see our Majority Leader here. Indeed, we'll hear from the voice of experience. But it is a problem, as we all know, the amount of time that each of us has to devote to fundraising, not only for ourselves but for our colleagues, is virtually undermining our ability to function as United States Senators. And I think it's well that we all sit down and in an honest and pragmatic way search out a solution.

The CHAIRMAN. Thank you, Senator Warner.

TESTIMONY OF HON. ROBERT C. BYRD, THE MAJORITY LEADER

The CHAIRMAN. We now will hear from our distinguished Majority Leader, Senator Robert C. Byrd of West Virginia, and when Senator Boren from Oklahoma arrives I will ask him to join the Majority Leader at the witness table. He will continue his testimony after you feel it is time for you to retire.

So, Senator Byrd, we look forward to your testimony this morning.

Senator BYRD. Mr. Chairman, I thank you for conducting these hearings, for beginning them early in the session. I don't know of any legislation that basically can do more good for our political system and to undergird our system of representative democracy than can this legislation. It can be improved, and I hope that the Committee will report the legislation as early as possible so that it can be scheduled for Senate action. And in the meantime, during that process, prior to the time it comes to the floor, I hope and believe that the Committee will give this legislation the kind of thorough attention that it needs, and, with the help of all Senators on both sides of the aisle, improve it where it needs to be improved.

I also thank Senator Stevens for his comments. Our viewpoints may differ a little, but this is in accordance with the legislative

process, and by a fusion of our thoughts we improve on legislation all the time.

I thank Senator Warner for his comments. He is absolutely correct when he indicates that the cost of campaigning is becoming so exorbitant as to undermine the legislative process, and with it the faith of the American people in our political system.

Now, Mr. Chairman, much has changed in the nation and the world since the Constitution was ratified and the first Congress was elected. Incidentally, the first Congress was to have convened 198 years ago yesterday, but only eight Senators appeared, two from Pennsylvania, two from New Hampshire, two from Connecticut, one from Georgia, and one from Massachusetts. And it was a month and two days before a quorum was established so the Senate was ready to do business.

Of course, in that first Congress, many of the basic planks underlying the system of government we have were put into place. The Judiciary Act was enacted, establishing the judiciary; the electoral votes were counted, and George Washington was inaugurated. In those days the Senate and House met together in the Senate chamber, and it was on the upper floor of Federal Hall in New York City, which may have been one of the reasons why the United States Senate is sometimes referred to as the "upper house".

That was a historic Congress. Senator Maclay from Pennsylvania was a Senator to whom we are indebted for most of the knowledge that we have concerning the actions of the Senate and the House in that first Congress. The President was inaugurated and came to the Senate, and there was a door leading out on the balcony and the President walked out on the balcony and addressed the people, as he gave his first inaugural address.

At that time the Senate met in closed session, a practice which continued for five years. When it moved to Philadelphia it had to determine whether or not Albert Gallatin qualified for office, and, during the debate on that matter, opened its doors so that the people of Pennsylvania, where Mr. Gallatin was quite popular, would not feel that a Star Chamber session was being conducted. And then the Senate returned to closed sessions until, in 1795, it was opened permanently, and a small gallery was built which would perhaps accommodate fifty persons.

Now, recently we have extended that gallery from the Pacific to the Atlantic via television, so we've made our second great step.

Inasmuch as we are today meeting just a day after the first Congress was to have convened, I believe that attention should be called to that fact, particularly in the context of what we are discussing here.

The Congress is the people's branch. It's mentioned in the first of the seven Articles—in the very first sentence of the First Article. The Second Article created the executive and the Third the judicial branch. Congress can feel proud and honored that it was the first of the three branches to be created and the first to be actually in place, and that before it came into place the other two could not come into place.

Much has changed in the nation and the world since then. But the essential function served by free and popular elections, as well as the representative role of the Congress, has not changed. Over

our history, wise and able men from all walks of life have served in this great legislative assembly, which has grappled with the most pressing and vital issues of consequence to Americans and the world in the Congress' 200-year history.

For most of our history, the ability to raise large sums of money upon which to campaign was not necessary. That has changed, and so too will the character of the Congress change, if we do not act to prevent it.

As I said in my remarks on the opening day of this historic Congress, the 100th Congress, it will be a tragedy if the entrance requirement for service in this great forum is not intelligence, integrity, ability, and public-spiritedness, but rather the willingness and the ability to play the deadly earnest game of fundraising, or personal wealth and the willingness to spend it or to risk it in order to gain election.

On the first day of this Congress, the distinguished senior Senator from Oklahoma, Mr. Boren, and I, and others, introduced S. 2, legislation to change the present system of campaign financing to a system which establishes voluntary limits on campaign expenditures, provides for partial public financing in general elections to those candidates who accept such limits, and limits the power of special interests in our campaign financing and political system by restricting contributions by political action committees, or PAC's, and independent expenditures in elections. Only candidates who demonstrate broad-based support by meeting a contribution threshold from small and primarily in-state individual contributors can participate in the partial public financing system that is established by this bill.

These long-overdue reforms will permit us to restore the public's trust in the electoral process. Once in place, they will permit Members to devote more of their time and their talent to legislative duties, and less time to what I call "the money chase."

Mr. Chairman, Members of the Committee, dramatically rising campaign expenditures and growing special-interest dominance in campaign financing are issues that affect the way in which the people of this great nation view the integrity of their Congress. Candidates need larger and larger sums of money to compete in mass media campaigns.

I must say, as one who has been in politics now for going on 41 years, as one who has been on this Hill for going on 35 years, and in the Senate for going on 29 years, I am deeply concerned by what I see as a growing threat to our representative form of government, and a growing threat to this institution.

When my former colleague, Jennings Randolph, and I first ran for the United States Senate in 1958, we ran on a combined political war chest of something like \$50,000. In 1982, when I ran for re-election to my fifth term in the Senate, my campaign costs were in the neighborhood of \$2 million—so I had to raise about \$2 million.

That's a lot of money, although not as much as is spent in some states with much bigger populations. But \$2 million is a lot of money to have to raise in a race for re-election from a state of less than two million people, and, in the case of West Virginia, a state that is hard-hit economically. This kind of money cannot be raised in West Virginia. I'm only speaking from memory now, but I think

I raised about a quarter of a million dollars in West Virginia; that means I had to raise seven times that amount outside West Virginia; that means I had to go to New York, to Florida, to California, to Arizona, to Utah, to Pennsylvania, to Minnesota, to Georgia, all over this country, and in many instances had to go a number of times to those other states. Others can tell similar stories.

Not all special interest groups are bad, by any means—that's not what I'm implying. Many of these special interest groups do represent the beliefs of a majority of Americans on this issue or that issue, or the other issue. But Senators are having to go out and spend time when they ought to be here voting, here working in committees, here looking after the mail from constituents, here meeting with constituents. Instead, they are forced to go out and spend hours and days and weekends traveling all over the country in order to raise money for the next campaign. They are not violating the law in doing that; they are playing by the present rules.

As Majority Leader, I know something about how Senators have to go out and spend their time to raise money for their re-election campaigns. They are forced to do it by necessity. They are simply facing up to the realities of the era in which we live, the electronic age, computers, media consultants, expensive mailing lists—all of these things. And more and more the time they are taking away from their duties is savaging their responsibilities to their constituents and to their own families and to this institution. But they have to do it if they wish to continue in public service.

Those who wish to serve are forced to engage in this unceasing, ever-increasing demand for money, money, money—the money chase.

I'm concerned that if something is not done about it, we are going to see things go from bad to worse. It isn't going to get any better. And the faith and the confidence and the trust that the people should accord to this institution, to the legislative branch, are going to be undermined and eroded. That will result in lasting injury to this institution and to the country that we all love.

Something has to be done about this matter, and I hope that action will be taken this year. We Americans continue to put our faith in this system that has proved to be the best system in the world. Our current system of campaign financing undermines that faith, and that is why it must be changed. But it won't be easy to achieve the reforms that are badly needed. They are going to be opposed. They are going to be opposed wrongly.

The reforms we seek are not a condemnation of PAC's *per se*, they are not a condemnation of the people who work with PAC's and who work for PAC's. They are a condemnation of a process that is growing and that is a debilitating process, because of the time that it takes Senators to raise money, and because that process eventually is going to force a change in the make-up of the legislature to the point where only those individuals who are wealthy and who are able to spend money hand over fist can win campaigns of election to this body.

Not all of us are able to do that. Not very many of us are that fortunate. And that is no criticism of people who have wealth. I wish I were able to be as well off. But we are talking about the

institution now, and we are talking about this institution's place in the overall constitutional universe of the American government.

We must stop the mad, seemingly limitless escalation of campaign costs that have resulted in campaigns for single seats that cost over \$20 million in some instances and in average expenditures by winning candidates in 1986 nearing \$3 million.

It's not surprising that public confidence in the Congress is declining, as you have pointed out, Mr. Chairman—it's declining. And you mentioned the negative campaigns. I've been the object of those negative campaigns, so have you, other Members of this Committee have been. Those campaigns would be less negative if there were less money out there to be thrown around by these organizations that are pretty reckless in the distortion of the truth concerning the records and positions of Members of this body. If there weren't so much money, there wouldn't be so much media advertising, and there wouldn't be so much negative mail. It stands to reason that one way to go after the negativism is to put some sense into the process of campaign financing.

The people's confidence is declining as news reports surface of the larger and larger amounts we receive each election from special interests. I know it is a concern of the distinguished Chairman of the Committee, as it is a concern of mine, that more and more citizens are choosing not to vote.

And one of the reasons they give is that much of this money spent on campaigning is used to purchase television time in which a candidate tears down his opponent and often tears down this institution itself. In short, voters are fed up with present expensive, negative and personalized campaigns that are funded more and more by special interest groups.

The Boren-Byrd bill seeks to address these concerns directly.

It's important to stop and think of the institutional consequences of permitting the present system to continue.

Mr. Chairman, if this bill doesn't pass, another bill will. And even if the deluge isn't stopped this year or next, it will be stopped. This legislation is going to pass at some point—maybe not this particular bill precisely as it is written. But this is an idea whose time has come, and the American people are going to demand action by the Congress in doing something about this growing problem. Excessive campaign costs and the need to spend large amounts of money can only serve to discourage talented persons of modest means from seeking public office. It is becoming more and more widely known and accepted as truth that one cannot seek election to the United States Senate without the certainty of being able to raise millions of dollars to spend in a campaign. If one is to finance a \$2 million campaign, as I did in 1982, one must raise \$2,739 every day of every week for two straight years, Saturdays and Sundays included. The task of raising all this money pulls incumbents away from their myriad and vital responsibilities in the Congress, responsibilities to the people who elect them. It means they have less of an opportunity to meet with the voters and learn their concerns, and to study and debate the key issues that ought to be the bases for the electorate's choice in an election.

I see this problem manifested not only in my role as a campaigner for re-election to the Senate, who must raise large sums of

money necessary for a successful campaign but also as Majority Leader. You can't be a statesman unless you're here—you've got to be a politician first, you've got to win that election before you can be a statesman. But from the Leadership perspective, and I know that the Republican Leader, Mr. Dole, sees it from the same point of view, the pressures of raising funds, especially outside Washington, or certainly outside the state which one represents, make it more and more difficult for the Leaders to conduct the Senate's business in the committees and subcommittees and on the floor.

I hear it all the time. I heard it when I was Minority Leader. I hear it as Majority Leader. Senators on my side of the aisle come to me, as Senators on the other side go to Senator Dole: Can you avoid any votes on Monday? I've got to go here or I've got to go there. Or half a dozen Senators have to go here or go there to raise money. Can you avoid any votes on Friday? We have to raise some money. Can you avoid having any votes after 4 o'clock? I've got a fundraiser in New York City or Miami or Los Angeles. And these are not the Senators necessarily from New York or Florida or California. They have to go raise the money and they don't want any roll call votes.

Now, how can a Majority Leader run the Senate under such circumstances? He has the responsibility of scheduling the legislative program but how can he do it while still being considerate of his colleagues? It's becoming more and more impossible.

It is now a reality that members of this body must start raising money two years, three years, four years and even five years before their next election. And to raise this money Senators start hosting fundraisers years before they next stand for re-election.

When Congress amended the Federal Election Campaign Act in 1974 establishing the presidential public financing system, we faced a similar crisis of confidence in presidential elections. That legislation had its detractors, its critics, and its opponents. But only twelve years later that system is widely seen as a success. Only one of the thirty-five candidates for the presidency since the law went into effect has chosen not to participate in the system. Our current President, Ronald Reagan, relied on public financing in his 1976, 1980, and 1984 campaigns. And that system has worked. It has succeeded in a very big way. Presidential public financing has checked the increase in presidential campaign spending.

In the 1972 presidential election, without public financing and spending limits, President Nixon spent a record \$62 million in the primary and general election campaigns. In 1984, with public financing and spending limits, President Reagan spent \$68 million in the primary and general elections, a 10-percent increase in twelve years during which the costs of congressional campaigns rose a staggering 485 percent.

The Commission on National Elections, headed by Melvin Laird and Robert Strauss, concluded: "Public financing of presidential campaigns has clearly proved its worth in opening up the process, reducing undue influence of individuals and groups, and virtually ending corruption in presidential election finance. This major reform of the 1970's should be continued." Mr. Chairman, the success of spending limits and public financing in presidential cam-

paigns should strengthen our resolve to do no less for senatorial elections.

I'd like to bring to the Committee's attention some pertinent data and statistics concerning the escalation in campaign expenditures. As the graphic based upon data prepared by the Congressional Research Service demonstrates, campaign expenditures for all general election House and Senate candidates rose from \$321 million in 1984 to around \$390 million in 1986. Senate general election candidates spent nearly half of that amount, \$182 million, up a dramatic 23 percent over 1984. The average expenditures in 1985 and 1986 of candidates for the Senate in the 1986 general election were nearly \$3 million when party transfers are included. For winning 1986 candidates, the range in the same two-year period was from a low of \$741,645 to a high of \$12,735,757 when party transfers are included. Three out of four candidates for the U.S. Senate in 1986 spent in excess of \$1 million, and more than one in three spent in excess of \$3 million.

If we project in a straight line to 1988, we can expect the average campaign to cost nearly \$3.7 million.

Under our present system of campaign financing, candidates have no choice but to raise as much money as they can. This is reality for Republicans and Democrats, incumbents and challengers. We are all trapped by a system that forces us to make fundraising a major priority. Regardless of one's commitment to public service and to an agenda wholly focused on serving one's constituents and the nation, these cannot be pursued in the United States Senate if you can't be elected to the Senate. That is the stark reality that meets you going and coming; there's nowhere to hide.

Our dependence on special-interest PAC money is also a growing problem. We can again turn to the graphics. This also is a graphic based on data gathered by the Congressional Research Service. As the chart shows, PAC contributions to House and Senate general election candidates rose from \$100 million in 1984 to \$128 million in 1986. This chart presents the dramatic rise in PAC contributions from 1972, when they amounted to \$8½ million, to 1976, when they amounted to \$20½ million, to 1980, when they amounted to \$51.9 million, to 1984—we are just using presidential election years thus far—when they amounted to \$100.8 million, to 1986, which was not a presidential year, when they amounted to \$127.7 million.

Now, if we are to rely on the trend that we see in this graphic, we know that in the next election, 1988, they will amount to about \$155 million. They have increased \$27 million in the past two years, and, if they increase that much again, then in 1988 they will amount to \$155 million, a long way from \$8½ million in 1971, sixteen years earlier.

The share of total campaign receipts from PAC's for Senate general election candidates rose from 18 percent of total receipts in 1984 to 23 percent of the total receipts in 1986. The average U.S. Senate general election candidate received \$645,511 from PAC's in 1986, up from \$429,077 only two years ago. And for incumbents seeking re-election, the average total of PAC contributions was much higher, \$890,489. Total receipts in Senate races from PAC's have more than doubled since 1974.

Evidence of the growing role of PAC's can be seen in the numbers of candidates who have received \$1 million or more in PAC contributions. In 1985-86 there were thirteen U.S. Senate candidates who received \$1 million, or more, from PAC's. Two years before, in 1983 and 1984, in contrast, only three candidates received more than \$1 million, and two years before that, in 1981-1982, only two. In 1979-1980, there were no candidates who received more than \$1 million in PAC contributions. The overall spiralling increase in campaign spending, and the growing dependence upon PAC's, are two of the principal reasons why I have placed campaign financing reform at the top of a list of legislative priorities that this Congress ought to deal with in this first year of the 100th Congress.

I've been pleased to join Senator Boren as a principal cosponsor of S. 2. That bill, as it was introduced on January 6, reflects a long-standing commitment on my part to establish a system of campaign spending limits, coupled with partial public financing, plus limitations on the role of PAC money in elections. I am not new in joining this battle. A decade ago I led the fight to overcome a filibuster on an important congressional campaign finance reform bill. Unfortunately, that bill did not become law. But it was a worthy effort on the part of its supporters.

I was an early and strong supporter of cleaning up our system of presidential election campaign finance. And while part of that legislation was stricken by the courts, the remaining parts have corrected most of the worst abuses in presidential elections. Gone are the days of money in suitcases, corporate funds laundered through foreign banks, and wealthy individuals contributing very large sums of money in return for personal favors or presidential appointments.

I believe we can do no less for congressional elections. I respect the courage of those who have come forward on this issue, and I hope that in the coming days and weeks, as my colleagues on both sides of the aisle think this issue through, they, too, will come to the realization that the time is here to make the system of campaign financing reflect the broader public interest. We must design a system where the public interest can prevail.

Mr. Chairman, most of the rest of my prepared statement deals with details of the bill. Senator Boren is here, seated with me, and I, with your permission, would like to include in the record my complete statement.

The CHAIRMAN. Without objection, the total statement will be included in the record as if given.

Senator BYRD. I thank the Chairman, and I will not impose further on the time of the Committee. The Committee has been generous and patient and very attentive and courteous, and I will not impose upon the time of my colleague, Mr. Boren.

I close by saying again that I hope the Committee will complete this important work at a relatively early date and mark up the bill and send legislation to the floor, where I will do everything I can to press for floor action, also at a reasonably early time. This bill is not perfect, but I hope that the Committee will be in a position soon to report an improved bill to the floor of the Senate which the Senate

can and will support, one which will become law, and which will reflect well upon this institution.

Mr. Chairman, I thank you.

[The prepared statement of Senator Byrd follows:]

STATEMENT OF HON. ROBERT C. BYRD, THE MAJORITY LEADER

Mr. Chairman, much has changed in the Nation and the world since the Constitution was ratified and the First Congress elected. But the essential function served by free and popular elections, as well as the representative role of the Congress, has not. Over our history, wise and able men from all walks of life have served in this great legislative assembly which has grappled with the most pressing and vital issues of consequence to Americans and the world in the Congress' two hundred year history.

For most of our history the ability to raise large sums of money upon which to campaign was not necessary. That has changed and so, too, will the character of the Congress as a result, if we do not act to prevent it. As I said in my remarks on the opening day of this historic Congress, "It will be a tragedy if the entrance requirement for service to this great forum is not intelligence, integrity, ability, and public spiritedness, but rather the willingness and ability to play the deadly-earnest game of fundraising, or personal wealth and the willingness to spend it or risk it in order to gain election."

On the first day of this Congress, the distinguished senior Senator from Oklahoma, Senator Boren, and I introduced S. 2—legislation to change the present system of campaign financing to a system which establishes voluntary limits on campaign expenditures, provides for partial public financing in general elections to those candidates who accept such limits, and limits the power of special interests in our campaign financing and political system by restricting contributions by political action committees—or PAC's—and independent expenditures in elections. Only candidates who demonstrate broad-based support by meeting a contribution threshold from small and primarily in-State individual contributors can participate in the partial public financing system the bill establishes.

These long overdue reforms will permit us to restore the public's trust in the electoral process. Once in place, they will permit members to devote more of their time and talent to legislative duties and less time to what I have called "the money chase."

Mr. Chairman and members of the committee, dramatically rising campaign expenditures and growing special interest dominance in campaign financing are issues which affect the way in which the people of this great Nation view the integrity of the Congress. Candidates need larger and larger sums of money to compete in mass media campaigns.

I must say that as one who has been in politics now for 40 years, as one who has been on this Hill for going on 35 years and in the Senate for going on 29 years, I am deeply concerned by what I see as a growing threat to our representative form of Government and a growing threat to this institution. When my former colleague, Jennings Randolph, and I first ran for the U.S. Senate in 1958, we ran on a combined political funding war chest of around \$50,000. In 1982, when I ran for reelection to this body to serve my fifth term here as a Senator, I had to raise about \$2 million. That is a lot of money although not as much as is spent in some States with much bigger populations. But \$2 million is a lot of money to have to raise in a race for reelection from a State of less than 2 million people—the State of West Virginia.

This kind of money cannot be raised in West Virginia. I suppose I probably raised—I am only speaking from memory now—but I think I raised about a quarter of a million dollars in West Virginia. This means that I had to raise seven times that amount outside West Virginia.

Not all special interest groups are bad, by any means, and that is not what I am implying. I am sure that is not what the distinguished Senator from Oklahoma is saying. Many of these special interest groups do represent the beliefs of a majority of Americans on this issue or that issue or the other issue. But Senators are having to go out and spend time when they ought to be here, voting; here, working in committees; here, looking after the mail from their constituents; here, meeting with their constituents. Instead, they are forced to go out and spend hours and days and weekends traveling all over this country in order to raise money for their next campaign.

They are not violating the law in doing this. They are playing by the present rules.

As majority leader, I know something about how Senators have to go out and spend their time to raise money for their reelection campaigns. They are forced to do it by necessity.

They are simply facing up to the realities of the era in which we live, the electronic age—computers, media consultants, expensive mailing lists, all of these things. And more and more, the time that they are taking away from their duties here is savaging their responsibilities to their constituencies and to their own families. But they have to do it if they wish to continue public service. Those who wish to serve are forced to engage in this unceasing, ever-increasing demand for money, money, money—the money chase.

I am concerned that if something is not done about it, we are going to see things go from bad to worse, and the faith and confidence and trust that the people should accord to this institution, the legislative branch, are going to be undermined and eroded, and that will result in lasting injury to this institution and to the country that we all love.

Something has to be done about this matter, and I hope that action will be taken soon. We Americans continue to put our faith in this system that has proved to be the best system in the world. Our current system of campaign financing undermines that faith and that is why it must be changed. It will not be easy to achieve the reforms that are badly needed. These reforms are not a condemnation of PAC's *per se*. They are not a condemnation of the people who work with PAC's and who work for PAC's. They are a condemnation of a process that is growing and that is a debilitating process, because of the time that it takes Senators to raise money, and because that process eventually is going to force a change in the makeup of the legislature, to the point where only those individuals who are wealthy and able to spend money hand over fist can win campaigns of election to this body.

Not all of us are able to do that. Not very many of us are that fortunate. That is no criticism of people who have wealth. I wish I were able to be as well off. But we are talking about this institution's place in the overall constitutional universe of government.

We must stop the mad, seemingly limitless escalation of campaign costs that have resulted in campaigns for single Senate seats that cost over \$20 million, and in average expenditures by winning candidates in 1986 nearing \$3 million.

It is not surprising, Mr. Chairman and members of the committee, that public confidence in the Congress is declining as news reports surface of the larger and larger amounts we receive each election from special interests. I know it is a concern of the distinguished chairman of the committee, Senator Ford, as it is a concern of mine that more and more citizens are choosing not to vote. One of the reasons they give is that much of this money spent on campaigning is used to purchase television time in which a candidate tears down his opponent, and often this institution itself. In short, voters are fed up with present expensive, negative, and personalized campaigns which are funded more and more by special interest groups. The Boren/Byrd bill seeks to address these concerns directly.

It is important to stop and think of the institutional consequences of permitting the present system to continue. Excessive campaign costs and the need to spend large amounts of time raising funds can only serve to discourage talented persons of modest means from seeking public office. It is becoming more and more widely known and accepted as truth that one cannot seek election to the U.S. Senate without the certainty of being able to raise millions of dollars to spend in a campaign. If one is to finance a \$2 million campaign—as I did in 1982—one must raise \$2,739 every day of every week for two straight years, Saturdays and Sundays included. The task of raising all this money pulls incumbents away from their myriad and vital responsibilities in the Congress—responsibilities to the people who elect them. It means that they have less of an opportunity to meet with the voters and learn their concerns, and to study and debate the key issues which should be the basis for the electorate's choice in an election.

I see this problem manifest not only in my role as a campaigner for reelection to the Senate who must raise large sums of money necessary for a successful campaign. I see it also in my capacity as majority leader. I know that the Republican leader, Mr. Dole, sees it from that point of view. The pressures of raising funds, especially outside of Washington, that affect all Senators, make it more and more difficult for the leaders to conduct the business of the Senate, in the committees and subcommittees, and on the floor.

It is now a reality that Members of this body must start raising money two, three, and even four and five years before their next election. To raise this money, Senators start hosting fundraisers years before they next will stand for election.

When Congress amended the Federal Election Campaign Act in 1974, establishing the Presidential Public Financing System, we faced a similar crisis of confidence in Presidential elections. That legislation had its detractors, critics, and opponents. But only twelve years later that system is widely seen as a success. Only one of the thirty-five candidates for the Presidency since the law went into effect has chosen not to participate in the system. Our current President, Ronald Reagan, relied on public financing in his 1976, 1980, and his 1984 campaigns.

And that system worked; it has succeeded in a very big way. Presidential public financing has checked the increase in Presidential campaign spending. In the 1972 Presidential election, without public financing and spending limits, President Nixon spent a record \$62 million in the primary and general election campaigns. In 1984, with public financing and spending limits, President Reagan spent \$68 million in the primary and general election—a 10-percent increase in 12 years, during which the costs of congressional campaigns rose a staggering 485 percent.

The Commission on National Elections, headed by Melvin Laird and Robert Strauss, concluded, "Public financing of Presidential elections has clearly proved its worth in opening up the process, reducing undue influence of individuals and groups, and virtually ending corruption in Presidential election finance. This major reform of the 1970's should be continued." The success of spending limits and public financing in Presidential campaigns should strengthen our resolve to do no less for congressional elections.

I would like to bring to the committee's attention some pertinent data on statistics concerning the escalation in campaign expenditures. As the graphic based upon data prepared by CRS demonstrates, campaign expenditures for general election House and Senate candidates rose from \$321 million in 1984 to \$388 million in 1986. Senate general election candidates spent nearly half of this amount, \$182 million, up a dramatic 23 percent over 1984. The average expenditures in 1985 and 1986 of candidates for the Senate in the 1986 general election were nearly \$3 million, when party transfers are included. For winning 1986 candidates, the range in the same two-year period was from a low of \$741,645 to a high of \$12,735,757, when party transfers are included. Three out of four candidates for the U.S. Senate in 1986 spent in excess of \$1 million and more than one in three spent in excess of \$3 million. If we project in a straight line to 1988, we can expect the average campaign to cost nearly \$3.7 million.

Under our present system of campaign financing, candidates have no choice but to raise as much money as they can. This reality is true for Republicans and Democrats, incumbents and challengers. We are all trapped by a system which forces us to make fund raising a major priority. Regardless of one's commitment to public service and to an agenda wholly focused on serving one's constituents and Nation, these cannot be pursued in the U.S. Senate if you cannot get elected to the Senate. That is the stark reality.

Our dependence on special interest PAC money is also a growing problem. Again, I have prepared a graphic based on data gathered by CRS. As the chart shows, PAC contributions to House and Senate general election candidates rose from \$100 million in 1984 to \$128 million in 1986. This chart presents the dramatic rise in PAC contributions from 1972 to 1986. For instance, between 1980 and 1984, PAC contributions roughly doubled, rising by \$50 million in four years. If PAC contributions rise at the same rate between 1986 and 1988 as they did between 1984 and 1986, we could project a \$55 million increase between 1984 and 1988, raising the total all the way to \$156 million.

The share of total campaign receipts from PAC's for Senate general election candidates rose from 18 percent of total receipts in 1984 to 23 percent of total receipts in 1986. The average U.S. Senate general election candidate received \$645,511 from PAC's in 1986, up from \$429,077 only two years ago. And for incumbents seeking reelection, the average total of PAC contributions was much higher, \$890,489. Total receipts in Senate races from PAC's have more than doubled since 1974. Evidence of the growing role of PAC's can be seen in the numbers of candidates who have received \$1 million or more in PAC contributions. In 1985-86 there were 13 U.S. Senate candidates who received \$1 million or more from PAC's. Two years before, in 1983-84, in contrast, only three candidates received more than \$1 million and in 1981-82 only two. In 1979-80 there were no candidates who received more than \$1 million in PAC contributions.

The overall spiralling increase in campaign spending and the growing dependence upon PAC's are two of the principal reasons why I have placed campaign financing reform at the top of my list of personal legislative priorities for the first year of the 100th Congress, and was pleased to join Senator Boren as a principal cosponsor of S.

That bill, as it was introduced on January 6, reflects a longstanding commitment on my part to establish a system of campaign spending limits coupled with partial public financing, plus limitations on the role of PAC money in elections. I am proud to say that I am not newly joining this battle. A decade ago, I led the fight to overcome a filibuster on an important congressional campaign finance reform bill. Unfortunately, that bill did not become law, but it was a worthy effort on the part of its supporters. I was an early and strong supporter of cleaning up our system of Presidential election campaign financing.

While part of that legislation was struck down by the courts, the remaining parts have corrected most of the worst abuses in Presidential elections. Gone are the days of money in suitcases, corporate funds laundered through foreign banks, and wealthy individuals contributing very large sums of money in return for personal favors or Presidential appointments. I believe we can do no less for congressional elections.

I respect the courage of those who have come forward on this issue and hope that, in the coming days and weeks, as my colleagues on both sides of the aisle think this issue through, they will realize that the time has arrived to make the system of campaign financing reflect the broader public interest. We must design a system where the public interest can prevail.

Senate bill 2 approaches the problem of campaign financing comprehensively. It cannot be remedied on a piecemeal basis. Our bill combines a limitation on political action committees, independent contributions and foreign held corporate PAC's, with a system of voluntary campaign spending limits and partial public financing. The voluntary limits on campaign spending the bill sets for Senate candidates in general election campaigns in all States are based upon the population in each State: \$600,000 plus 25 cents per person of voting age. The bill provides some significant incentives to accept these limits: only participating candidates would be eligible for preferential television advertising rates.

If a participating candidate's opponent breaches the State's spending ceiling, the participating candidate will receive additional public funds. If a participating candidate is the target of excessive independent expenditures, the participating candidate can receive additional public financing. I believe these incentives and the public pressure to clean up our election financing system will likely result in most candidates meeting the threshold of small independent contributions, and acceptance of the spending limits and accompanying public funds. This system should fare as well as the Presidential system in which 34 of 35 Presidential candidates have chosen to participate in the public financing system.

To participate in the public system, a major party candidate must demonstrate broad based local support by raising 20 percent of his State's spending limit in individual contributions of \$250 or less, with 80 percent of those contributors residing within the candidate's State. The system will be financed by doubling the amount of the existing Federal income tax checkoff (now limited to funding Presidential campaigns from \$1 to \$2 per return). This checkoff, completely voluntary, does not increase any taxpayer's tax. This doubling of the checkoff is expected to produce the anticipated \$50 million a year our bill is projected to cost.

The bill also includes provisions which impose an aggregate limit on the amount of funds any Senate candidate can accept from all PAC's, set according to a State's population; reduces the amount any PAC can give to a candidate from \$5,000 to \$3,000; closes the present "bundling" loophole by requiring that contributions "bundled" or otherwise arranged by a PAC or other intermediary must count toward that PAC's or other intermediary's contribution limit.

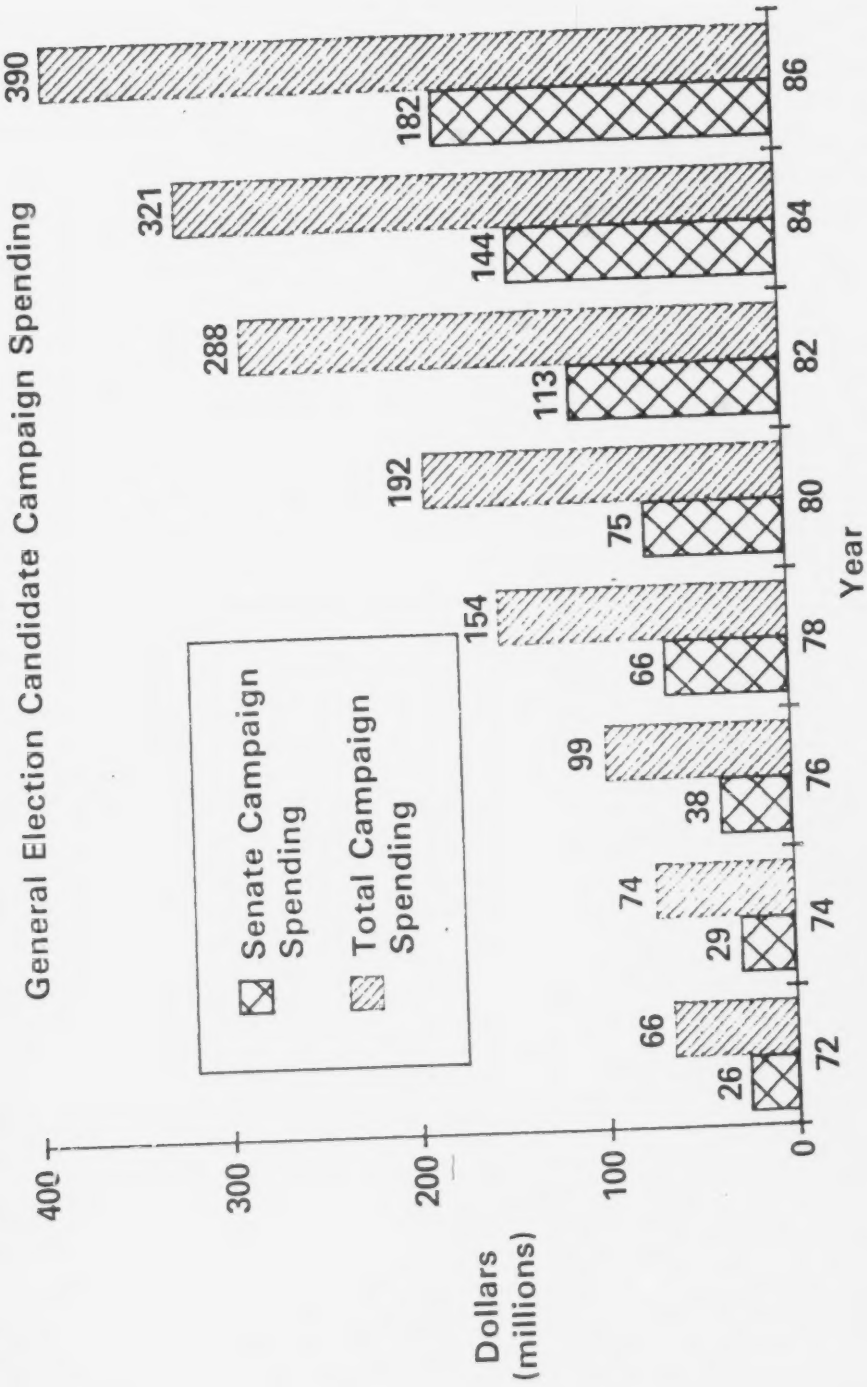
The bill requires that any media advertisement directed toward a congressional campaign must contain a message stating who authorized and paid for the ad. The bill sets limits on contributions to their own campaigns by Senate candidates and their families, and also deals with the problem of the involvement of subsidiaries of foreign owned companies in our elections by restricting their ability to form PACs and make campaign contributions.

I appreciate the leadership shown on this important issue by the senior Senator from Oklahoma, Senator Boren, and the willingness of the chairman of the Rules Committee, Senator Ford, to schedule early hearings on this bill. In my capacity as a member of the Rules Committee, and as a sponsor of this important bill, I will be working hard to solicit the input of my colleagues on this issue, and to assist in the markup of the bill when hearings are completed. I want at this point to offer my sincere personal thanks to, and admiration for, the chairman and for the speed with which he has moved on other committee business this year in order to enable action at this early date on campaign financing reform, and his public commitment to com-

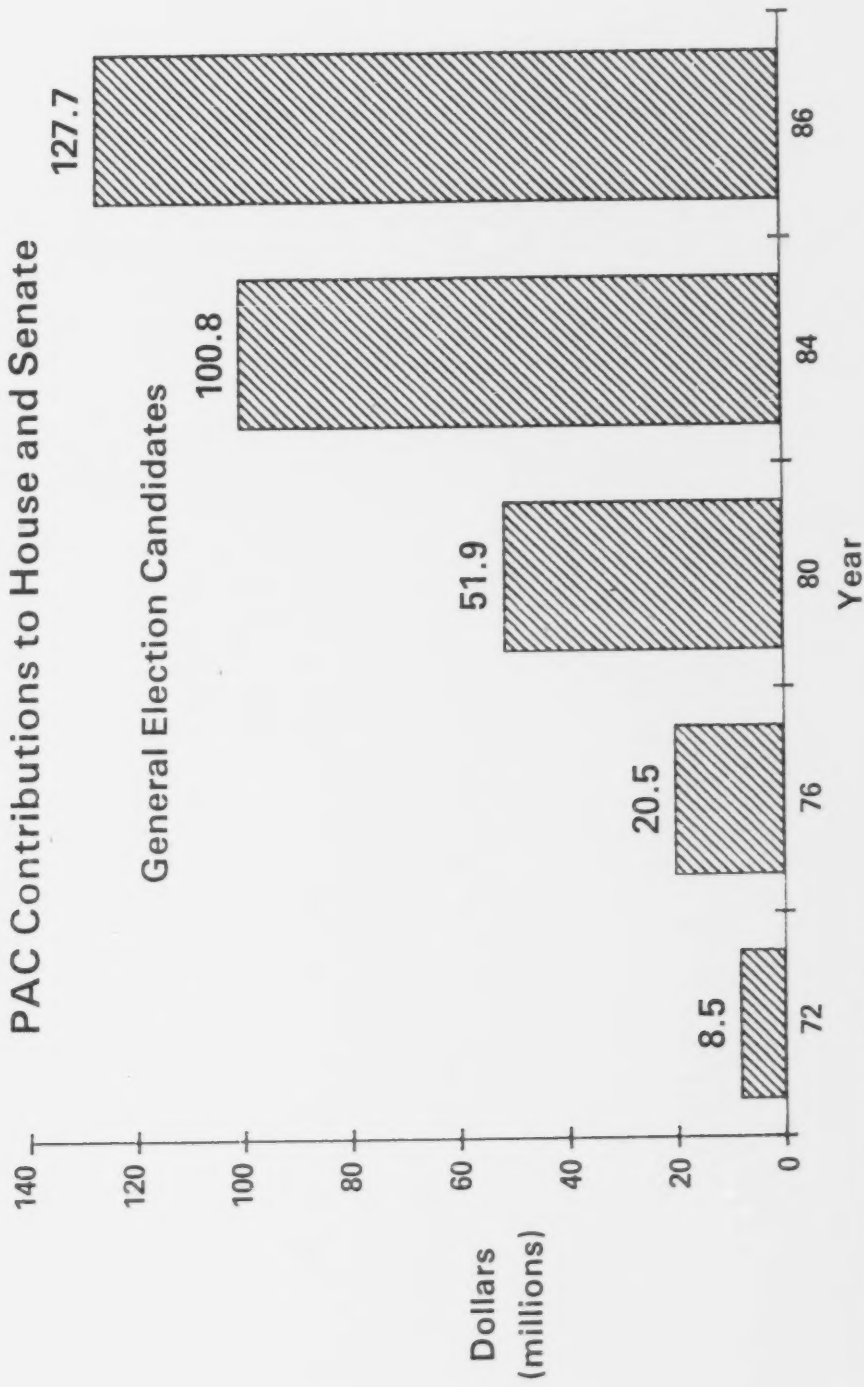
pleting hearings and markup and sending a bill to the Senate floor as rapidly as responsible and thorough consideration will permit.

I shall press for prompt floor action once this committee has completed its important work. Make no mistake about it—this is the Congress in which we must act on campaign financing reform.

Mr. President, I request unanimous consent to have a report from the Congressional Research Service entered into the record, along with copies of charts to which I have referred in my statement.



Source: CRS based on FEC data



Source: CRS based on FEC data

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SENATE CAMPAIGN EXPENDITURES, RECEIPTS
AND SOURCES OF FUNDS: 1980-1986

Prepared at Congressional Request

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and January 21, 1987)

ABSTRACT

This report presents aggregate data on campaign expenditures and receipts for major party Senate candidates in the general elections of 1980 - 1986. It also includes data on the sources of funds for those campaigns. Breakdowns are provided by party, candidate status, and election outcome.

SENATE CAMPAIGN EXPENDITURES, RECEIPTS AND SOURCES OF FUNDS: 1980 - 1986 *

This report provides data on financial activity of U.S. Senate campaigns in the 1980, 1982, 1984, and 1986 elections. It includes activity only for major party candidates on the general election ballot (including both their primary and general election activity; only primary losers are not included herein). For each election, the data reflect financial activity for the full two-year election cycle (January 1 of the pre-election year through December 31 of the election year).

The focus here is on campaign expenditures, campaign receipts, and sources of campaign funds (in four specific categories: individual citizens giving directly to candidates, political action committees--or PACs, political parties, and candidates themselves). Data are provided for each year in three forms--total dollars, average (mean) level, and median level--and with breakdowns for eight categories of candidates--all major party general election candidates, Democrats, Republicans, incumbents, challengers, open seat contenders, winners, and losers.

Table 1 provides data on campaign expenditures by major party Senate candidates for each year, for all eight categories, and in all three forms

* Appreciation is expressed to Kent Cooper, Assistant Staff Director for Disclosure of the Federal Election Commission, for his invaluable assistance in this project.

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(total amount, average [mean], and median). For each year, expenditures include total disbursements minus transfers among affiliated committees.

Table 2 provides the level of campaign expenditures, according to an alternate method of calculation. It refers to "adjusted expenditures," used here to include the expenditures (as reported in Table 1) plus the amount of political party coordinated expenditures on the candidates' behalf. These party expenditures, spent in accordance with 2 U.S.C. 441a(d), are made for campaign services (such as TV, polling, etc.) in coordination with the candidate but are reported solely as party expenditures. They are allocated to specific candidates, but they are not reflected in candidates' campaign receipts or expenditures statistics, as compiled by the Federal Election Commission, in contrast with party contributions to candidates. Because of the large amounts of money involved, particularly in Senate campaigns, and the large degree of candidate control over the disposition of these funds, many observers believe that they must be added to the reported candidate expenditures, in order to accurately reflect the real level of campaign expenditures, at least those over which the candidate may exercise a large degree of (if not total) control.

Table 3 examines the receipts side of the Senate campaign budgets, presenting data on campaign receipts and on the major components of those receipts, i.e., the major sources of funds in congressional campaigns: individual citizens (giving directly to candidates, as opposed to giving through PACs or parties), PACs, parties, and candidates (from personal or immediate family funds). Whereas FEC reports included data for each of the four major funding sources in 1984 and 1986, reports for 1980 and 1982 only provided aggregate receipts data for the PAC and party contributions (and

coordinated expenditures). Hence, funds from individuals and candidates are listed under "other" for the two earlier years. As in the previous tables, data are provided for each year, in all three forms, and for all eight categories.

Table 3 uses the term "adjusted receipts". For purposes of this study, this includes gross receipts minus transfers among affiliated committees plus party coordinated expenditures on behalf of candidates. The reason for doing so goes beyond the explanation provided in connection with Table 2. Specifically, when talking of funding sources, it is important to include both party contributions and party coordinated expenditures under the party component; hence, it is essential to add the coordinated expenditures data to the receipts side as well. The advantage of so doing is clearly reflected in the percentage figures in this table--the percentage which each funding source constituted of overall receipts.

In addition to adjusted receipts, this table provides data on the four major funding sources (where available). Two of these categories follow FEC format: individuals and PACs (referred to as nonparty committees by the FEC). The other two categories were adjusted, using FEC information. The party component includes both party contributions and party coordinated expenditures (the latter accounting for some 90 percent of the party component). The candidate component includes candidate contributions and candidate loans which were unpaid at the time of filing the reports (computed by subtracting candidate loan repayments from candidate loans). Although these unpaid loans may be paid at some point in the future, for the time being they may be reasonably considered to constitute contributions (there is no limit on candidate contributions to their own campaigns in congressional elections). As

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stated above, the dollar amounts are provided in each category and form, along with the percentage of overall receipts constituted by the specific funding source. It should be noted that the miscellaneous category under "other" includes such items as interest accumulated on campaign receipts (such as cash-on-hand from a prior election cycle), refunds and rebates on campaign services and equipment, etc.

Most of the data in these tables are derived from Federal Election Commission sources. For 1980, data were provided in the computer tapes of the FEC's Reports on Financial Activity, 1979-1980. Final Report. U.S. Senate and House Campaigns from January 1982. For 1982, data were provided in the computer tapes of the FEC's Reports on Financial Activity, 1981-1982. Final Report. U.S. Senate and House Campaigns from October 1983. For 1984, data were provided in the computer tapes of the FEC's Reports of Financial Activity, 1983-1984. Final Report. U.S. Senate and House Campaigns from November 1985. For 1986, all data except for the party contributions and expenditures were provided from the FEC's Direct Access System, as of March 3, 1987. Party contribution data were gathered from candidate reports on file at the FEC. Party coordinated expenditures were provided by the Democratic Senatorial Campaign Committee and the National Republican Senatorial Committee in January 1987. In the case of the Democratic Committee's data, some adjustments were made, upon consultation with some of the State party officials.

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TABLE 1. Campaign Expenditures of Major-Party Senate Candidates:
1980 - 1986 *

YEAR (Number of cases)	TOTAL 1/		AVERAGES 2/	
	Amount	Percent	Mean	Median
ALL CANDIDATES				
1986 (N = 68)	\$182,351,418	100	\$2,681,639	\$2,092,720
1984 (N = 65)	\$143,067,411	100	\$2,201,037	\$1,157,621
1982 (N = 66)	\$112,861,880	100	\$1,710,028	\$1,193,085
1980 (N = 67)	\$73,149,505	100	\$1,091,784	\$949,992
PARTY AFFILIATION				
Democrats:				
1986 (N = 34)	\$73,915,703	41	\$2,173,991	\$1,920,529
1984 (N = 33)	\$67,146,187	47	\$2,034,733	\$1,080,008
1982 (N = 33)	\$59,750,635	53	\$1,810,617	\$1,353,408
1980 (N = 34)	\$39,799,708	54	\$1,170,580	\$926,045
Republicans:				
1986 (N = 34)	\$108,435,715	59	\$3,189,286	\$2,600,891
1984 (N = 32)	\$75,921,224	53	\$2,372,538	\$1,173,619
1982 (N = 33)	\$53,111,515	47	\$1,609,440	\$1,098,218
1980 (N = 33)	\$33,349,797	46	\$1,010,600	\$949,992

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TABLE 1. Campaign Expenditures of Major-Party Senate Candidates:
1980-1986 * -- Continued

YEAR (Number of cases)	TOTAL <u>1/</u>		AVERAGES <u>2/</u>	
	Amount	Percent	Mean	Median
TYPE OF CANDIDATE				
Incumbents:				
1986	\$94,315,562	52	\$3,368,413	\$2,395,042
(N = 28)				
1984	\$72,056,722	50	\$2,484,715	\$1,638,467
(N = 29)				
1982	\$52,881,869	47	\$1,762,729	\$1,618,894
(N = 30)				
1980	\$32,542,297	44	\$1,301,692	\$1,123,651
(N = 25)				
Challengers:				
1986	\$50,592,571	28	\$1,806,878	\$909,649
(N = 28)				
1984	\$31,202,276	22	\$1,114,367	\$577,652
(N = 28)				
1982	\$35,128,488	31	\$1,170,950	\$879,770
(N = 30)				
1980	\$24,043,693	33	\$924,757	\$711,317
(N = 26)				
Open seats:				
1986	\$37,443,285	21	\$3,120,274	\$2,813,388
(N = 12)				
1984	\$39,808,413	28	\$4,976,052	\$3,680,968
(N = 8)				
1982	\$24,851,523	22	\$4,141,921	\$3,987,282
(N = 6)				
1980	\$16,563,515	23	\$1,035,220	\$841,845
(N = 16)				

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TABLE 1. Campaign Expenditures of Major-Party Senate Candidates:
1980-1986 * -- Continued

YEAR (Number of cases)	TOTAL 1/		AVERAGES 2/	
	Amount	Percent	Mean	Median
ELECTION OUTCOME				
Winners:				
1986 (N = 34)	\$105,384,831	58	\$3,099,554	\$2,264,862
1984 (N = 33)	\$97,512,721	68	\$2,954,931	\$1,761,115
1982 (N = 33)	\$68,188,171	60	\$2,066,308	\$1,612,746
1980 (N = 34)	\$40,085,894	55	\$1,178,997	\$1,031,277
Losers:				
1986 (N = 34)	\$76,966,587	42	\$2,263,723	\$1,149,466
1984 (N = 32)	\$45,554,690	32	\$1,423,584	\$661,186
1982 (N = 33)	\$44,673,709	40	\$1,353,749	\$1,024,595
1980 (N = 33)	\$33,063,611	45	\$1,001,928	\$895,052

* Table includes data only for candidates on the general election ballot (primary and general election activity combined); primary losers are excluded.

1/ Expenditure amounts include total disbursements minus transfers among affiliated committees for the two-year election cycle.

2/ The mean is the total amount divided by the number of cases. The median is that amount at which half the cases are less than and half the cases are greater than the amount.

SOURCES:

1980-1984:

U.S. Federal Election Commission. Reports on Financial Activity, 1979-1980, 1981-1982, 1983-1984. Final Reports. U.S. Senate and House Campaigns. January 1982, October 1983, and November 1985 (computer tapes).

1986: U.S. Federal Election Commission. Direct Access System, March 3, 1987.

CRS-8

TABLE 2. Adjusted Campaign Expenditures of Major-Party Senate Candidates: 1980 - 1986 *

YEAR (Number of cases)	TOTAL 1/		AVERAGES 2/	
	Amount	Percent	Mean	Median
ALL CANDIDATES				
1986 (N = 68)	\$198,842,703	100	\$2,924,157	\$2,224,780
1984 (N = 65)	\$153,533,557	100	\$2,362,055	\$1,262,056
1982 (N = 66)	\$123,842,838	100	\$1,876,407	\$1,410,629
1980 (N = 67)	\$79,717,175	100	\$1,189,809	\$1,046,795
PARTY AFFILIATION				
Democrats:				
1986 (N = 34)	\$80,297,046	40	\$2,361,678	\$2,035,873
1984 (N = 33)	\$71,093,918	46	\$2,154,361	\$1,154,215
1982 (N = 33)	\$62,013,562	50	\$1,879,259	\$1,429,773
1980 (N = 34)	\$40,932,620	51	\$1,203,901	\$976,776
Republicans:				
1986 (N = 34)	\$118,545,657	60	\$3,487,637	\$2,682,393
1984 (N = 32)	\$82,439,639	54	\$2,576,239	\$1,346,708
1982 (N = 33)	\$61,827,276	50	\$1,873,554	\$1,260,786
1980 (N = 33)	\$38,784,555	49	\$1,175,290	\$1,142,845

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TABLE 2. Adjusted Campaign Expenditures of Major-Party Senate Candidates: 1980-1986 * -- Continued

YEAR (Number of cases)	TOTAL 1/		AVERAGES 2/	
	Amount	Percent	Mean	Median
TYPE OF CANDIDATE				
Incumbents:				
1986 (N = 28)	\$101,403,611	51	\$3,621,558	\$2,485,263
1984 (N = 29)	\$75,687,770	49	\$2,609,923	\$1,751,714
1982 (N = 30)	\$56,014,157	45	\$1,867,139	\$1,678,252
1980 (N = 25)	\$33,652,937	42	\$1,346,117	\$1,153,202
Challengers:				
1986 (N = 28)	\$57,535,584	29	\$2,054,842	\$1,228,174
1984 (N = 28)	\$34,973,002	23	\$1,249,036	\$667,550
1982 (N = 30)	\$40,505,717	33	\$1,350,191	\$1,040,537
1980 (N = 26)	\$27,318,283	34	\$1,050,703	\$914,118
Open seats:				
1986 (N = 12)	\$39,903,508	20	\$3,325,292	\$2,984,936
1984 (N = 8)	\$42,872,785	28	\$5,359,098	\$3,859,986
1982 (N = 6)	\$27,322,964	22	\$4,553,827	\$4,254,544
1980 (N = 16)	\$18,745,955	24	\$1,171,622	\$1,013,411

CRS-10

TABLE 2. Adjusted Campaign Expenditures of Major-Party Senate Candidates: 1980-1986 * — Continued

YEAR (Number of cases)	TOTAL 1/		AVERAGES 2/	
	Amount	Percent	Mean	Median
ELECTION OUTCOME				
Winners:				
1986 (N = 34)	\$113,868,540	57	\$3,349,075	\$2,374,175
1984 (N = 33)	\$102,481,509	67	\$3,105,500	\$1,798,435
1982 (N = 33)	\$73,013,251	59	\$2,212,523	\$1,660,005
1980 (N = 34)	\$44,149,922	55	\$1,298,527	\$1,148,024
Losers:				
1986 (N = 34)	\$84,974,163	43	\$2,499,240	\$1,501,893
1984 (N = 32)	\$51,052,048	33	\$1,595,377	\$798,425
1982 (N = 33)	\$50,829,587	41	\$1,540,291	\$1,154,879
1980 (N = 33)	\$35,567,253	45	\$1,077,796	\$957,747

* Includes expenditures (as provided in Table 1) plus party coordinated expenditures on behalf of candidates (as allowed under 2 U.S.C. 441a(d)), for candidates on the general election ballot; table covers primary and general election activity combined.

1/ Expenditure amounts include total disbursements minus transfers among affiliated committees for the two-year election cycle.

2/ The mean is the total amount divided by the number of cases. The median is the point at which half the cases are less than and half the cases are greater than the amount.

SOURCES:

1980-1984:

U.S. Federal Election Commission. Reports on Financial Activity, 1979-1980, 1981-1982, 1983-1984. Final Reports. U.S. Senate and House Campaigns. January 1982, October 1983, and November 1985 (computer tapes).

1986: U.S. Federal Election Commission. Direct Access System, March 3, 1987. Party contributions data are from reports on file at FEC; party coordinated expenditures data are from the Democratic Senatorial Campaign Committee and the National Republican Senatorial Committee. Democratic data are adjusted slightly, based on conversations with State party officials.

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TABLE 3. Adjusted Receipts and Sources of Funds of Major Party Senate Candidates: 1980 - 1986 *

YEAR (Number of Cases)	ADJUSTED RECEIPTS 1/ (Percent)	PACs 3/ (Percent)	Political parties 4/ (Percent)	SOURCE OF FUNDS 2/ OTHER 5/		
				Total Other (Percent)	Individuals 6/ (Percent)	Candidates 7/ (Percent)
ALL CANDIDATES						
Totals:						
1986 (N = 68)	\$199,020,714	\$44,970,806 23%	\$17,899,597 9%	\$136,150,311 68%	\$124,438,489 63%	\$2,736,998 1%
1984 (N = 65)	\$157,406,137	\$27,890,017 18%	\$11,498,035 7%	\$118,018,085 75%	\$95,328,618 61%	\$13,470,025 9%
1982 (N = 66)	\$126,697,654	\$21,791,044 17%	\$12,160,516 10%	\$92,746,094 73%	N/A	N/A
1980 (N = 67)	\$81,520,035	\$15,727,232 19%	\$7,710,138 9%	\$58,082,665 71%	N/A	N/A
Average (Mean):						
1986 (N = 68)	\$2,926,775	\$661,335	\$263,229	\$2,002,210	\$1,829,978	\$40,250
1984 (N = 65)	\$2,421,633	\$429,077	\$176,893	\$1,815,663	\$1,466,594	\$207,231
1982 (N = 66)	\$1,919,661	\$330,167	\$184,250	\$1,405,244	N/A	N/A
1980 (N = 67)	\$1,216,717	\$234,735	\$115,077	\$866,905	N/A	N/A
Median:						
1986 (N = 68)	\$2,341,722	\$767,196	\$163,067	\$1,406,400	\$1,334,821	\$0
1984 (N = 65)	\$1,349,496	\$407,708	\$105,230	\$910,723	\$672,203	\$0
1982 (N = 66)	N/A	\$287,335	\$95,448	\$923,789	N/A	N/A
1980 (N = 67) *	N/A	\$221,988	\$65,218	\$749,260	N/A	N/A

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TABLE 3. Adjusted Receipts and Sources of Funds of Major Party Senate Candidates: 1980-1986 * -- Continued

YEAR (Number of Cases)	ADJUSTED RECEIPTS 1/ (Percent)	PACs 3/ (Percent)	Political parties 4/ (Percent)	SOURCE OF FUNDS 2/ OTHER 5/		
				Total Other (Percent)	Individuals 6/ (Percent)	Candidates 7/ (Percent)
PARTY AFFILIATION:						
DEMOCRATS						
Totals:						
1986	\$82,109,395	\$19,989,544	\$7,025,706	\$55,094,145	\$50,057,935	\$1,740,835
(N = 34)		24%	9%	67%	61%	2%
1984	\$73,142,378	\$12,975,151	\$4,389,198	\$55,778,029	\$40,991,252	\$11,001,615
(N = 33)		18%	6%	76%	56%	15%
1982	\$64,022,513	\$10,839,451	\$2,844,534	\$50,338,528	N/A	N/A
(N = 33)		17%	4%	79%	N/A	N/A
1980	\$41,827,073	\$7,343,262	\$1,613,376	\$32,870,435	N/A	N/A
(N = 34)		18%	4%	79%		
Average (Mean):	\$2,414,982	\$587,928	\$206,638	\$1,620,416	\$1,472,292	\$51,201
1986						\$96,923
(N = 34)						
1984	\$2,216,436	\$393,186	\$133,006	\$1,690,243	\$1,242,159	\$333,382
(N = 33)					N/A	N/A
1982	\$1,940,076	\$328,468	\$86,198	\$1,525,410	N/A	N/A
(N = 33)					N/A	N/A
1980	\$1,230,208	\$215,978	\$39,540	\$966,778	N/A	N/A
(N = 34)						
Median:						
1986	\$2,145,826	\$639,286	\$108,746	\$1,230,492	\$1,152,383	\$0
(N = 34)						\$0
1984	\$1,293,137	\$404,905	\$32,100	\$910,723	\$672,203	\$0
(N = 33)					N/A	N/A
1982	N/A	\$290,259	\$75,011	\$1,029,096	N/A	N/A
(N = 33)					N/A	N/A
1980	N/A	\$211,993	\$41,203	\$738,488	N/A	N/A
(N = 36)						

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TABLE 3. Adjusted Receipts and Sources of Funds of Major Party Senate Candidates: 1980-1986 * — Continued

YEAR (Number of Cases)	ADJUSTED RECEIPTS 1/	PACs 3/ (Percent)	Political parties 4/ (Percent)	SOURCE OF FUNDS 2/			
				OTHER 5/			
				Total Other (Percent)	Individuals 6/ (Percent)	Candidates 7/ (Percent)	Misc. (Percent)
PARTY AFFILIATION, Continued:							
REPUBLICANS							
Totals:							
1986 (N = 34)	\$116,911,319	\$24,981,262	\$10,873,891	\$81,056,166	\$74,380,554	\$996,163	\$5,679,449
		21%	9%	69%	64%	0%	5%
1984 (N = 32)	\$84,263,759	\$14,914,866	\$7,108,137	\$62,240,756	\$54,337,366	\$2,468,410	\$5,434,980
		18%	8%	74%	64%	3%	6%
1982 (N = 33)	\$62,675,141	\$10,951,593	\$9,315,982	\$42,407,566	N/A	N/A	N/A
		17%	15%	68%			
1980 (N = 33)	\$39,692,962	\$8,383,970	\$6,096,762	\$25,212,230	N/A	N/A	N/A
		21%	15%	64%			
Average (Mean):							
1986 (N = 34)	\$3,438,568	\$734,743	\$319,820	\$2,384,005	\$2,187,663	\$29,299	\$167,043
1984 (N = 32)	\$2,633,242	\$466,490	\$222,151	\$1,945,024	\$1,598,043	\$77,137	\$169,843
1982 (N = 33)	\$1,899,247	\$331,866	\$282,302	\$1,285,078	N/A	N/A	N/A
1980 (N = 33)	\$1,202,817	\$254,060	\$184,750	\$764,007	N/A	N/A	N/A
Median:							
1986 (N = 34)	\$2,788,311	\$874,630	\$225,073	\$1,802,226	\$1,721,168	\$0	\$87,791
1984 (N = 32)	\$1,402,947	\$414,580	\$156,474	\$928,889	\$713,115	\$0	\$72,801
1982 (N = 33)	N/A	\$261,679	\$223,311	\$843,855	N/A	N/A	N/A
1980 (N = 33)	N/A	\$235,675	\$139,353	\$754,714	N/A	N/A	N/A

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TABLE 3 Adjusted Receipts and Sources of Funds of Major Party Senate Candidates: 1980-1986 * -- Continued

YEAR (Number of Cases)	ADJUSTED RECEIPTS 1/ \$	PACA 3/ (Percent)	Political parties 4/ (Percent)	OTHER 5/			
				Total Other (Percent)	Individuals 6/ (Percent)	Candidates 7/ (Percent)	Misc. (Percent)
SOURCE OF FUNDS 2/							
TYPE OF CANDIDATE:							
INCUMBENTS							
Totals:							
1986	\$101,762,111	\$25,084,990	\$7,627,918	\$69,049,203	\$63,953,921	\$885,808	\$4,209,476
(N = 28)		25%	7%	68%	63%	1%	4%
1984	\$78,446,985	\$17,921,614	\$4,076,017	\$56,449,354	\$51,646,839	\$291,789	\$4,510,726
(N = 29)		23%	5%	72%	66%	0%	6%
1982	\$58,262,604	\$14,270,887	\$3,656,804	\$40,334,913	N/A	N/A	N/A
(N = 30)		24%	6%	69%			
1980	\$34,715,684	\$7,720,183	\$1,466,178	\$25,529,323	N/A	N/A	N/A
(N = 25)		22%	4%	74%			
Average (Mean):							
1986	\$3,634,361	\$895,893	\$272,426	\$2,466,043	\$2,284,069	\$31,636	\$150,338
(N = 28)							
1984	\$2,705,068	\$617,987	\$140,552	\$1,946,529	\$1,780,925	\$10,062	\$155,542
(N = 29)						N/A	N/A
1982	\$1,942,087	\$475,696	\$121,893	\$1,344,497	N/A	N/A	N/A
(N = 30)							
1980	\$1,388,627	\$308,807	\$58,647	\$1,021,173	N/A	N/A	N/A
(N = 25)							
Median:							
1986	\$2,788,311	\$949,494	\$106,681	\$1,715,532	\$1,568,933	\$0	\$96,021
(N = 28)							
1984	\$1,779,792	\$653,749	\$103,839	\$1,006,559	\$949,175	\$0	\$126,223
(N = 29)						N/A	N/A
1982	N/A	\$456,271	\$88,893	\$1,098,836	N/A	N/A	N/A
(N = 30)							
1980	N/A	\$291,596	\$46,332	\$839,426	N/A	N/A	N/A
(N = 25)							

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TABLE 3. Adjusted Receipts and Sources of Funds of Major Party Senate Candidates: 1980-1986 * -- Continued

YEAR (Number of Cases)	ADJUSTED RECEIPTS 1/ (Number of Cases)	SOURCE OF FUNDS 2/					Misc. (Percent)
		FACS 3/ (Percent)	Political parties 4/ (Percent)	OTHER 5/			
				Total Other (Percent)	Individuals 6/ (Percent)	Candidates 7/ (Percent)	
TYPE OF CANDIDATE, Continued:							
CHALLENGERS							
Totals:							
1986 (N = 28)	\$57,662,501	\$10,416,998	\$7,493,633	\$39,751,870	\$35,006,156	\$1,850,436	\$2,895,278
1984 (N = 28)	\$35,514,680	\$5,908,484	\$4,192,810	\$25,413,386	\$23,033,930	\$949,554	\$1,429,902
1982 (N = 28)	\$40,751,752	\$4,793,982	\$5,909,175	\$30,048,595	N/A	N/A	N/A
1980 (N = 30)	\$27,722,771	\$4,968,524	\$3,708,665	\$19,045,582	N/A	N/A	N/A
1980 (N = 26)							
Average (Mean):							
1986 (N = 28)	\$2,059,375	\$372,036	\$267,630	\$1,419,710	\$1,250,220	\$66,087	\$103,403
1984 (N = 28)	\$1,268,381	\$210,017	\$149,743	\$907,621	\$822,640	\$33,913	\$51,068
1982 (N = 28)	\$1,358,392	\$159,799	\$196,973	\$1,001,620	N/A	N/A	N/A
1980 (N = 30)	\$1,066,260	\$191,097	\$142,641	\$732,522	N/A	N/A	N/A
1980 (N = 26)							
Median:							
1986 (N = 28)	\$1,260,556	\$161,710	\$154,733	\$751,169	\$666,955	\$2,505	\$12,404
1984 (N = 28)	\$670,802	\$94,897	\$98,717	\$407,494	\$335,662	\$500	\$22,467
1982 (N = 28)	N/A	\$146,025	\$112,747	\$654,118	N/A	N/A	N/A
1980 (N = 30)	N/A	\$100,746	\$80,581	\$630,215	N/A	N/A	N/A
1980 (N = 26)							

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TABLE 3. Adjusted Receipts and Sources of Funds of Major Party Senate Candidates: 1980-1986 * -- Continued

YEAR (Number of Cases)	ADJUSTED RECEIPTS 1/	PACs 3/ (Percent)	Political parties 4/ (Percent)	SOURCE OF FUNDS 2/			Misc. (Percent)
				Total Other (Percent)	Individuals 6/ (Percent)	Candidates 7/ (Percent)	
							OTHER 5/
TYPE OF CANDIDATE, Continued:							
OPEN SEAT							
Totals:							
1986	\$39,596,102	\$9,468,818	\$2,778,046	\$27,349,238	\$25,478,412	\$754,027	\$1,870,072
(N = 12)		24%	7%	69%	64%	0%	5%
1984	\$43,444,472	\$4,059,919	\$3,229,208	\$36,155,345	\$20,647,849	\$12,228,682	\$3,278,814
(N = 8)		9%	7%	83%	48%	28%	8%
1982	\$27,683,298	\$2,726,175	\$2,594,537	\$22,362,586	N/A	N/A	N/A
(N = 6)		10%	9%	81%	N/A	N/A	N/A
1980	\$19,081,580	\$3,038,525	\$2,535,295	\$13,507,760	N/A	N/A	N/A
(N = 16)		16%	13%	71%	N/A	N/A	N/A
Average (Mean):							
1986	\$3,299,675	\$789,068	\$231,504	\$2,279,103	\$2,123,201	\$63	\$155,839
(N = 12)							
1984	\$5,430,559	\$507,490	\$403,651	\$4,519,418	\$2,580,981	\$1,528,585	\$409,852
(N = 8)							
1982	\$4,613,883	\$454,363	\$432,423	\$3,727,098	N/A	N/A	N/A
(N = 6)							
1980	\$1,192,599	\$189,908	\$158,456	\$844,235	N/A	N/A	N/A
(N = 16)							
Median:							
1986	\$2,917,916	\$797,565	\$227,584	\$2,270,190	\$1,805,107	\$0	\$94,673
(N = 12)							
1984	\$3,860,282	\$387,447	\$332,593	\$3,256,572	\$1,721,112	\$253,672	\$180,232
(N = 8)							
1982	N/A	\$351,908	\$284,096	\$3,797,508	N/A	N/A	N/A
(N = 6)							
1980	N/A	\$225,235	\$77,913	\$682,466	N/A	N/A	N/A
(N = 16)							

TABLE 3. Adjusted Receipts and Sources of Funds of Major-Party Senate Candidates: 1980 - 1986 * -- Continued

* Includes data only for candidates on the general election ballot (primary and general election activity combined); primary losers are excluded.

N/A = Not available or not computed.

1/ Adjusted receipts include total receipts minus transfers among affiliated committees plus party coordinated expenditures on behalf of the candidate (as allowed under 2 U.S.C. 441a(d)).

2/ Includes breakdowns for the major funding sources. Percentages sum across rows. Sum of percentages of individuals, candidates, and miscellaneous is also shown under total percentage for "other".

3/ Receipts from political action committees, recorded by the FEC under its six groupings of "nonparty committees": labor, corporate, non-connected, trade/membership/health, cooperatives, and corporations without capital stock.

4/ Receipts from political parties include contributions from parties and coordinated expenditures by parties on behalf of candidates. (In 1984, the latter accounted for roughly 90 percent of the party total.)

5/ Includes two of the major funding sources. For elections before 1984 the FEC did not provide aggregate data on individual and candidate contributions.

6/ Receipts from individual citizens (through direct contributions), recorded as such by the FEC.

7/ Receipts from candidates include candidate contributions to their campaigns plus candidate loans unrepaid at time of filing (i.e., candidate contributions plus [candidate loans minus candidate loan repayments]).

SOURCES:

1980-1984:

U.S. Federal Election Commission. Reports on Financial Activity, 1979-1980, 1981-1982, 1983-1984, Final Reports. U.S. Senate and House Campaigns. January 1982, October 1983, and November 1985 (computer tapes).

1986: U.S. Federal Election Commission. Direct Access System, March 3, 1987. Party contributions data are from reports on file at FEC; party coordinated expenditures data are from the Democratic Senatorial Campaign Committee and the National Republican Senatorial Committee. Democratic data are adjusted slightly, based on conversations with State party officials.

The CHAIRMAN. I thank the distinguished Leader. Would the distinguished Senator from Oklahoma allow me to call upon the Members of the Committee who wish to have their statements in the record, and then we will proceed.

Senator Byrd, you are not planning to leave right now, are you?

Senator BYRD. Yes, I will have to leave soon, if I may be permitted to do so. I will be happy, before going, if the Chair wishes to have a question or two directed to me—otherwise my colleague here will be in an excellent position to answer the questions, probably better than I.

The CHAIRMAN. As Majority Leader, you can do anything you want to, as far as this Chairman is concerned. [Laughter.]

And I will recognize the Senator from North Carolina, Mr. Helms, for a statement at this time.

Senator HELMS. Mr. Chairman, thank you very much. My fellow tarheel—I remind him every so often that he was born in North Carolina, and we are proud of that. Excellent statement. I notice you said we have the best system in the world. I think that's right. I think it was Churchill who said that we have the worst system in the world, except all the rest. I don't know what the distinction is.

Senator BYRD. Senator Helms, I know you remember the county in which I was born—Wilkes County. What is that county most noted for?

Senator HELMS. Well, I don't want to offend Wendell Ford, who has a big distillery down there, but they do a lot of distilling in your home county.

Senator BYRD. In Wilkes County.

The CHAIRMAN. Yes, but ours is bottled and stamped and we pay the revenue. [Laughter.]

Senator HELMS. Mr. Chairman, you are going to think that my summary is long—and I'll make it as quickly as I can—but I ask unanimous consent that I may have the entire statement included in the record.

The CHAIRMAN. Without objection, it will be included in the record as if given in total.

Senator HELMS. I thank the Chair. And certainly, Mr. Chairman, I thank you for agreeing to include S. 615 in today's hearing. I introduced S. 615 last week to close a loophole in our Federal election laws that presently allow the use of forced union dues for political purposes.

Now, before discussing that bill, which will be, I hope, a modification of the bill, S. 2, let me say that I am puzzled by many of the proposals coming before the Committee today, as I understand them. I've always believed that our political system is based on the philosophy of voluntary participation, full disclosure, and political accountability. It seems to me that some of the proposals before us today may force taxpayers to finance candidates whom they may not support; in other words, make them pay for their own misery. At the same time they would further limit the freedom of Americans to participate voluntarily in the political process through political action committees.

Thomas Jefferson is sort of a personal hero of mine, and he said, "To compel a man to furnish contributions for the propagation of

opinions which he disbelieves is sinful and tyrannical." And I fully agree with Tom Jefferson.

I don't think we can justify compelling citizens to contribute through their tax dollars to candidates whom they may not support, indeed whom they may not even know.

So if it's the collective wisdom of this body that political action committees have undue influence in the political process, then we should respond not by restricting the freedom of people to participate through political action committees, but it seems to me we should do it by enhancing the role of individuals in the national political parties.

And I think this may benefit the system by encouraging more, not less, participation by the American people.

Now, if we trust the American people to hold elected officials accountable for their actions in office, the last thing I think we should do is restrict the freedom or resources that candidates can use to communicate to the public about their opponent.

How else can the public hold elected officials accountable unless challengers are free to review and discuss their deficiencies? If we restrict the freedom of a challenger to expose to the public the inadequacies in an incumbent's record of service, then I think we will do a grave disservice to the American public's right to be informed, and we will make mockery of the concept of political accountability.

Furthermore, I don't think we have any business trying to establish complex formulas to dictate how much candidates should or should not spend in seeking public office. The American people I think are perfectly competent to judge that for themselves.

Our responsibility, as I see it, is to assist the public in becoming as well-informed as possible before they cast their votes. We can best accomplish this, I think, by requiring full disclosure by every candidate for public office and by promoting extensive debate on the issues and thorough discussions of each candidate's qualifications and performance. And if the public believes that so-called negative advertising is undesirable or unwise, then, too, they are free to let that be known through their vote. I would observe, however, that an honest definition of this term "negative advertising" generally turns out to be an epithet used by candidates and the news media to denigrate a candidate whom they oppose. One man's meat is another man's poison.

In any case, Mr. Chairman, let me as briefly as I can explain the problem that my bill, S. 615, is designed to remedy. The Supreme Court has clearly stated that non-union employees have a constitutional right to prevent unions from spending compulsory dues—and I quote the Court—"to express political views unrelated to its duties as exclusive bargaining representative."

The Court has clearly stated that—and again I quote—"the amount at stake for each individual dissenter does not diminish this concern, for, whatever the amount, the quality of respondents' interest in not being compelled to subsidize the propagation of political or ideological views that they oppose is"—the Court says—"clear."

Now, despite this clear enunciation of constitutional rights, our Federal labor laws, in conjunction with Federal election laws, con-

tinue to give organized labor a power enjoyed by no other private association, the power to take money from the American workers as a condition of getting a job or keeping a job, and use that money for political causes and candidates whom the workers themselves may not support.

Now, while the Federal Election Campaign Act prohibits the use of compulsory dues for direct—and I emphasize the word—“direct” cash contributions to political candidates, it does not, Mr. Chairman, prohibit the use of forced union dues for a number of indirect means of supporting political candidates and causes.

Consequently, the statute allows union PAC's to use forced dues from dissenting workers for partisan political activities in direct contravention to the holding of the Supreme Court. There is just no justification for the Federal Election Campaign Act to continue to make this distinction between direct and indirect political expenditure. And S. 615 would amend the Federal Election Campaign Act to prohibit the use of compulsory union dues for any political expenditures, direct or indirect.

Now, of course, Mr. Chairman, some will claim that the use of compulsory union dues for politics is analogous to the use of corporate funds to establish political action committees with which stockholders may disagree, and they say that this bill would unfairly tip the political balance of power in favor of business interests.

And let me just make three points quickly that shatter that argument.

First, keep in mind that the balance of power is already skewed by the National Labor Relations Act, which gives unions a power enjoyed by no other organization, and that power is the power to collect dues from American workers as a condition of employment.

Second, this bill does no more than protect the constitutional right of dissenting union members not to have their forced dues used for political purposes.

And, third, the U.S. Court of Appeals for the District of Columbia has specifically rejected the analogy between dissenting union members and corporate shareholders. In doing so, the Court pointed out that a corporate shareholder is under no compulsion to support a political cause against his will, and the Court said “The shareholder invests in a corporation of his own volition and is free to withdraw his investment at any time and for any reason.”

Mr. Chairman, I think that any campaign reform legislation—if we are going to be fair about it and be honest about it—must deal with the abusive use of compulsory union dues in addition to other true reforms, such as efforts to prevent incumbents from using their office and the taxpayers' money for campaigning.

Thank you for your indulgence, Mr. Chairman.

[The prepared statement of Senator Helms follows:]

STATEMENT OF HON. JESSE HELMS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I thank you for agreeing to include in today's hearing the bill I introduced last week, co-sponsored by Senators Thurmond, Garn, Grassley, Symms, and Nickles. The bill, S. 615, proposes to close a loophole in our Federal election laws that continues to allow the use of compulsory union dues for political purposes.

Before discussing S. 615, though, let me just say that I am puzzled by many of the proposals before the committee today. I have always believed that our political

system was based on the philosophy of voluntary participation, full disclosure, and political accountability. Yet many of the proposals before us today are antithetical to that philosophy.

There are proposals that would force taxpayers to finance candidates whom they may not support. At the same time, these proposals would further limit the freedom of Americans to participate voluntarily in the political process through political action committees.

Thomas Jefferson, who is a sort of personal hero to me, said, "To compel a man to furnish contributions for the propagation of opinions which he disbelieves is sinful and tyrannical." I fully agree with him. We cannot justify compelling citizens to contribute through their tax dollars to candidates whom they may not support—indeed, may not even know.

With regard to the role of political action committees, if it is the collective wisdom of this body that such groups should have less influence in the political process because they represent narrow or "special" interests, then we should respond, not by restricting the freedom of people to participate through political action committees, but by enhancing the role of individuals and national political parties. The national parties represent the broadest of all political associations. This effort is likely to benefit our system by encouraging more, not less, participation by the American people.

In addition, if we trust the American public to hold elected officials accountable for their actions in office, the last thing we should do is restrict the freedom or resources that candidates can use to communicate to the public about their opponents. How else can the public hold elected officials accountable unless challengers are free to reveal and discuss their deficiencies?

If we restrict the freedom of a challenger to expose to the public the inadequacies in an incumbent's record of service—if we restrict the ability of a candidate to communicate to the public, either by controlling the context of that communication, or by limiting the resources available, then we will do a grave disservice to the American public's right to be informed, and we will make mockery of the concept of political accountability.

Furthermore, we have no business trying to establish complex formulas to dictate how much is appropriate for candidates to spend in seeking public office. The American people are perfectly competent to judge that for themselves.

Our responsibility, as I see it, is to assist the public in becoming as well-informed as possible before they cast their vote. We can best accomplish this by requiring full disclosure by candidates for public office and by promoting extensive debate on the issues and thorough discussion of each candidate's qualifications and performance. In this regard, if the public believes that so-called "negative advertising" is undesirable or unwise, then, too, they are free to let that be known through their vote. I would observe that an honest definition of "negative advertising" generally turns out to be an epithet used by candidates and the news media to denigrate a candidate whom they oppose.

Mr. Chairman, let me turn now to one of the most blatant violations of political freedom: the use of compulsory union dues for political purposes.

The Supreme Court has clearly stated that nonunion employees have a constitutional right to prevent unions from spending compulsory dues "to express political views unrelated to its duties as exclusive bargaining representative." The Court has also made it clear that "[t]he amount at stake for each individual dissenter does not diminish this concern. For, whatever the amount, the quality of respondents' interest in not being compelled to subsidize the propagation of political or ideological views that they oppose is clear." [*Chicago Teachers Union v. Hudson* (1985)].

Mr. Chairman, despite that clear enunciation of constitutional rights, our federal labor laws, in conjunction with our federal election laws, continue to give organized labor a power enjoyed by no other private association—the power to take money from American workers as a condition of getting a job, or keeping a job, and use that money for political causes and candidates whom the workers themselves may not support.

The Federal Election Campaign Act, as amended in 1976, has only the appearance of restricting the use of compulsory union dues for political purposes. While the law does prohibit the use of compulsory dues for direct cash contributions to political candidates, it does not—I say again, does not—prohibit the use of forced union dues for a number of indirect means of supporting political candidates and causes.

Section 441b of the Federal Election Campaign Act specifically states that it is unlawful for a corporation or labor organization to make a "contribution or expenditure" in connection with any federal primary general election. It does allow corpora-

tions and labor unions to set up separate political action committees, which can make direct contributions and expenditures for political purposes.

Section 441b(b)(3) prohibits a PAC from using compulsory union dues to make "contributions or expenditures." However, the definition of "contribution or expenditure" specifically excludes a number of valuable political activities, such as communications by the union to its members and their families, get-out-the-vote campaigns, and the establishment, administration, and solicitation of contributions to the PAC. Consequently, the statute allows unions to use compulsory union dues for partisan political activities in direct contravention to the holding of the Supreme Court.

Mr. Chairman, because of this legal dichotomy, union officials divide their political expenditures into two categories: hard money and soft money. Hard money consists of money given directly to candidates in the form of cash or in-kind contributions taken from funds given voluntarily by union members. Soft money is that enormous amount of money spent by union officials on behalf of—but not contributed directly to—political candidates.

This so-called soft money finances the operations of union PACs; it provides extensive in-kind political services; and, in fact, it represents the overwhelming bulk of union political expenditures. This is money coming directly from union dues that workers must pay as a condition of employment.

Mr. Chairman, this soft money can run well into the millions of dollars each election cycle. For example, in July 1976, AFL-CIO public relations director Bernard Albert revealed that the annual budget of the AFL-CIO's Committee on Public Education alone ran to approximately \$2 million.

In spite of the vast sums of compulsory union dues that finance the operating costs of union PAC's, the bulk of compulsory dues soft money goes for unreported, unlimited in-kind political expenditures. The July 1979 issue of *Steelabor*, the official newspaper of the United Steelworkers of America, offered its readers a surprisingly candid and straightforward explanation of in-kind political spending. "Union Dues money," reported the union paper, "can't go for direct political contributions—but it can do a lot; mailings supporting or opposing political candidates, phone banks, precinct visits, voter registration, and get-out-the-vote drives."

In spite of these admissions, the account in *Steelabor* only tells half of the story. To fill out the picture, several key expenditures need to be added to the list: thousands of union employees devoted almost solely to partisan political activities; election day workers paid overtime rates from compulsory dues; millions of political pamphlets and flyers; and paid election-day carpools and babysitters, and many others.

Mr. Paul Jensen, Walter Mondale's campaign liaison to organized labor, estimated that the unions' soft money contributions to Mr. Mondale's campaign was worth about \$20 million. This is money that is neither documented nor reported to the Federal Election Commission. This overwhelming amount of political expenditure remains hidden from the American public.

In light of the Supreme Court's unequivocal holding that no compulsory union dues can be used for political purposes, there is absolutely no justification for the Federal Election Campaign Act to continue to make this distinction between direct and indirect political expenditures. S. 615 would amend the Federal Election Campaign Act to prohibit the use of compulsory union dues for any political expenditures, direct or indirect.

Mr. Chairman, opponents of my proposal will claim that the use of compulsory union dues for politics is analogous to the use of corporate funds to establish political action committees with which stockholders may disagree. They say my legislation would unfairly tip the political balance of power in favor of business interests by restricting only union politics.

First, we must keep in mind that the balance of power is already skewed by the National Labor Relations Act, which gives unions a power enjoyed by no other organizations: the power to collect dues from American workers as a condition of their employment.

Second, this bill is not designed to deny labor organizations, or anyone else, the right to participate freely in the political process. It is designed, and is necessary, to protect the constitutional right of dissenting union members not to have their forced dues used for political purposes. The U.S. Court of Appeals for the District of Columbia, in *Federal Election Commission v. International Association of Machinists*, specifically rejected the analogy between dissenting union members and corporate shareholders.

In that case, Mr. Chairman, attorneys for the International Association of Machinists union charged that 11 corporations had violated the Federal Elections Cam-

paign Act by soliciting contributions to their political action committees from administrative personnel under what they termed "inherently coercive" conditions. After the district court ruled that no such violation had occurred, the U.S. Court of Appeals heard several constitutional issues raised by the plaintiffs.

Union attorneys asked the appeals court to decide whether the use of general corporate assets to establish and support corporate political action committees violates the first amendment rights of dissenting shareholders. Union attorneys attempted to base their claim on the landmark case *Abood v. Detroit Board of Education*, in which the Supreme Court held that the First Amendment prohibits unions from forcing employees to support political causes against their will through the use of compulsory union dues. Union attorneys attempted to draw a parallel between the situation in *Abood* and the use of treasury funds by corporations to establish and administer PAC's.

The Court of Appeals was not convinced. The Court ruled that there was no valid analogy between the union position in *FEC v. International Association of Machinists* and the fact situation in *Abood*. The Court pointed out that a corporate shareholder is under no compulsion to support a political cause against his will. Citing another Supreme Court decision, *First National Bank of Boston v. Bellotti*, the Court of Appeals said "the shareholder invests in a corporation of his own volition and is free to withdraw his investment at any time and for any reason."

Mr. Chairman, let me reiterate that any campaign reform effort must deal with the abusive use of compulsory union dues. The time has come to return to individual workers the right to choose for themselves which political candidates and causes their dollars will be used to support.

Mr. Chairman, I thank you again for your time and consideration.

The CHAIRMAN. Thank you, Senator. Senator Adams also has a statement. We give you the same privilege, Senator, and your statement will be included in the record in toto. If you want to summarize it, that will be fine.

Senator ADAMS. Thank you, Mr. Chairman. I will summarize it, and I will ask a member of my staff to place a little cartoon before the Committee and place it, if the Majority Leader would allow it, on the stand so people could examine it. It represents, I think, very well the problem I'm about to discuss.

I want to thank my colleagues and the other witnesses, and I would like to take just a moment to discuss my recent experiences, since, as a new Member of the Senate, and as a non-incumbent running, I am one who has just been through this experience, and I can tell you that it is one that I will never forget. And I might say that it would be very easy for me, Mr. Chairman, to sit here and to say I am an incumbent, the system works, I will be here for six years, and I can get re-elected. But I don't think any candidate, either challenger or incumbent, should have to go through the year that I went through last year.

From the first day of my campaign to the last perhaps the most serious problem that I faced was raising enough money to run a credible race. I don't even talk yet about a winning race—I mean simply a credible race, to be in the contest at all. I faced this problem despite a network of friends and contacts that I had acquired through twelve years in the Congress and three years in the cabinet. I thought, naively perhaps, that a lifetime of public service would count for something. But I found instead that potential contributors, particularly PAC's, were worried about offending the incumbent. A campaign to cut off money becomes a distinct strategy in any modern political campaign.

The cartoon shows how you can be made to be seen to be a candidate who has no chance. Those of you in the audience who can't see the cartoon, what it represents is Adams standing very large on

a dog sled with a large whip prepared to go—it's labeled a campaign, and out in front there is a piggy bank, and this piggy bank is very small and it obviously isn't going to pull this sled away, and the cry that goes out underneath is, "Mush, mush!"

I never imagined, Mr. Chairman, how much personal time and staff time had to be spent correcting this problem. Whether it was phone calls asking for contributions, meetings with potential donors, fundraising receptions in—and, as the Majority Leader has pointed out—in and out of State, I spent at least 50 percent of my time asking for money. The reality is that candidates for public office, whether incumbent or challenger, are now having to do this. This is time that could be better spent learning and discussing the issues that face our State and Nation with our constituents. This is time that could better be spent talking with voters and listening to them.

We spend so much time asking for money because campaign costs have escalated beyond all reason. That is why we need the kind of campaign spending limits that Boren-Byrd sets. My opponent spent almost twice as much as I did, and lost. We both could have spent less and still waged a very hard and vigorous campaign.

The more serious problem is one of perception. I believe we are facing a real crisis with our constituents who believe more and more that we are a body that is up for sale. I do not believe that any of my colleagues would sell a vote. I know they wouldn't sell a vote for a campaign contribution. But as the amount of money that we raise grows and grows, it fuels a perception among voters that we are for sale in some way. We just cannot allow the present system of campaign financing to further undermine voters' faith and trust in their government.

Reforming this would go a long way toward reforming a system that has gone amok. Without reform, we could risk creating a Senate of the United States that is akin to the House of Lords. I am concerned that we will exclude from this great body all but the wealthy or those with very low needs and with an instantaneous volatile issue, and I am concerned we will exclude people like myself who ran for the Senate, who are neither rich nor poor.

We need to look beyond our own interests and look after the national interest, as has been well stated. I believe the Boren-Byrd bill does just that. And that's why I urge my colleagues on the Committee and in the Senate to look at this bill very carefully. We have an historic opportunity, and I hope will rise to the challenge. And I ask, Mr. Chairman, for the opportunity to make this brief statement this morning because I think I represent a whole class that came in during the last election. It is not partisan—it happened in both parties. And I want to applaud you, Mr. Chairman, for scheduling these hearings, and I want to congratulate Senator Boren and Senator Byrd for the work that they did on this issue.

I look forward to moving the bill forward, Mr. Chairman, and I think that—and this is just an extraneous note to those who are looking at the next election, whether incumbents or non-incumbents—that the day that you simply could have held public office, go to the voters and explain your record, or, if you are an incumbent running from the House, be certain that you were either going to hold your seat or move up to a Senate seat, really cannot

be sustained under the pressures that are going on in the present campaign election system.

So I thank you for the opportunity to make this statement, Mr. Chairman, and I will leave the cartoon for the edification of those who are facing the next campaign.

[The prepared statement of Senator Adams follows:]

STATEMENT OF HON. BROCK ADAMS, A U.S. SENATOR FROM THE STATE OF
WASHINGTON

Thank you, Mr. Chairman. Before we hear from our colleagues and other witnesses, I want to take just a minute to discuss my recent experience as a non-incumbent candidate for the Senate.

The experience I just went through is one that I will never forget. It would be easy for me to sit here as an incumbent and say: the system works, I got elected and I can get reelected. But I do not think that any candidate, challenger or incumbent should have to go through the year I did. From the first day of my campaign to the last day perhaps the most serious problem I faced was raising enough money to run a credible race. I faced this problem despite the network of friends and contacts which I had acquired during 12 years in the House and three in the Cabinet. I thought that a lifetime of public service would count for something. What I found instead was that potential contributors, particularly PACS, were worried about offending the incumbent.

I never imagined how much of my personal time and my staff's time would be spent on fundraising. Whether it was personal phone calls asking for a contribution or meetings with potential donors or fundraising receptions in and out of the state. I spent at least 50 percent of my time asking for money. The reality is that candidates for public office, whether incumbent or challenger, spend too much time asking for money. This is time that could be better spent learning about the issues which face our states and our nation. This is time that could be better spent talking to voters. We spend so much time asking for money because campaign costs have escalated beyond all reason. That is why we need the kind of spending limits that Boren-Byrd sets. My opponent spent almost twice as much as I and still lost. We both could have spent less and still waged a hard and vigorous campaign.

The more serious problem is one of perception. I believe we are facing a real crisis when our constituents believe more and more that we are a body that is up for sale. I do not believe that any of my colleagues would "sell" a vote for a campaign contribution. But as the amount of money we raise grows and grows, it fuels a perception among voters that we are for sale. We cannot allow the present system of campaign financing to further undermine voters faith and trust in their government.

I have studied the Boren-Byrd bill closely. It is not perfect but it goes a long way toward reforming a system that has gone amuck. Without reform we run the risk of creating a United States Senate that is akin to a House of Lords. I am concerned that we will exclude from this great body all but the wealthy. I am concerned that we will exclude people like myself, who ran for the Senate, who held no elective office and possessed no great personal wealth.

We need to look beyond our own interests and look after the national interest. I believe the Boren-Byrd bill does that. That is why I urge my colleagues on the Committee and in the Senate to look at this bill very carefully. We have a historic opportunity. I hope we will rise to the challenge.

Again, I applaud my Chairman for scheduling these hearings and I congratulate Senator Boren and Senator Byrd for their work on this issue. I look forward to moving this bill forward.

FROM THE SEATTLE TIMES BY DREW PASEK



The CHAIRMAN. A picture is worth a thousand words, Senator. Thank you very much for your very good statement. Senator DeConcini, I believe you have a comment.

Senator DECONCINI. Mr. Chairman, I want to applaud you and your Ranking Member, the Senator from Alaska, for holding these hearings. And I have a statement I will put in the record, if you don't mind.

The CHAIRMAN. Without objection, it will be included.

Senator DECONCINI. I do want to say something while the Majority Leader is here and Senator Boren is here. I've only been in this institution for ten years—Mr. Leader, as you know, we run in the same election cycle—and I'm optimistic for the first time in ten years with the coalition that you and Senator Boren have put together that we can do something substantive with the campaign election laws. And the reason I am optimistic is because I have witnessed the determination of the Majority Leader, both in the Majority and the Minority. When I came here in 1977 as supporting election law reform, I found that you were already out front on that issue. I came here supporting TV in the Senate, and at the time you had some reservations about it. But you are a national leader with the capability of molding legislation that can pass. And you did that with television and opening the Senate on the rules changes. And now that you have joined our good colleague from Oklahoma to support this legislation, for the first time in 10 years I feel optimistic.

And Senator Adams from Washington is so correct. I'm running in the future as an incumbent, but I would gladly give up whatever advantage that is if we could have a level playing field, if we could have an opportunity to discuss issues. In reference to my dear colleague from North Carolina—I wish he was here—beating up on any one interest who have a right to present their case (whether it's labor, environmentalist, business, or whoever) does not serve the purpose of trying to find a solution. If we are really interested in this process, it's high time that we put our heads together, that we operate in a spirit of good will, and in a spirit of finding a solution.

And, Mr. Chairman, I am most appreciative of your willingness to take your time, and the time of the staff of this Committee, to do the work. And I think we have an opportunity that is historic, Mr. Leader, Senator Boren, and I'm glad to support your bill. I'm going to do all I can to put forth a constructive effort in making it work.

Thank you, Mr. Chairman.

[The prepared statement of Senator DeConcini follows:]

STATEMENT OF HON. DENNIS DECONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Mr. Chairman, I would like to express my appreciation to you for holding today's hearings. I am sure this hearing is but the first in what will be a series of hearings on the important issue of election reform. The issues will not be easy and Chairman Ford deserves great credit for beginning the process.

The time for election reform is now. Every year we delay is another year in which the American public loses faith in its elected representatives and in the election process. In 1984 the Gallup organization took a poll that showed a majority of the American public in favor of public financing. In November, my State of Arizona overwhelmingly passed a sweeping overhaul of its campaign finance law; 72 percent

of the Arizona voters said strongly and loudly—we want a change! The Arizona vote is but a small indication that the American people will not wait any longer.

I am a cosponsor of the Boren-Byrd bill, S. 2. I am also a cosponsor of the Hollings-Heflin Constitutional amendment which would overturn *Buckley v. Valeo*. While my preferred approach would be to set spending limits without public financing, the likelihood of passing a Constitutional amendment in the short term is not good, and we need to take action immediately. I remain convinced that the Supreme Court did us a disservice in the *Buckley v. Valeo* decision, but nonetheless it is a decision we must live with.

Senators Boren and Byrd have constructed an outline for election reform that is both credible and creditable. Not only is their plan workable, but it truly attacks many of the problems in the system. I look forward to working with the Senators as the Rules Committee continues its consideration of election reform.

One omission of the Boren-Byrd bill in my judgment is the failure to address primary campaigns. By imposing spending limits on general elections only, we create a loophole large enough for an elephant or a donkey. If we are going to ask the American public to contribute tax dollars for limited public financing, we must insure that the spending limits are real and not a charade. I believe that we can find a fair way to impose primary spending limits.

Mr. Chairman, I look forward to hearing from the Majority Leader, Senator Boren and our other Senatorial witnesses. Therefore, I will cut my remarks short. You may count on my continued avid interest in this subject. This is not and cannot be made a partisan issue. Let the chips fall where they may, real reforms must be made.

The CHAIRMAN. I thank the Senator for his compliments.

Senator Boren, Senator Byrd has asked that you be with him as you are the technician on this bill. If you have a statement that you would like to make, the Committee would be delighted to listen to you, and then we probably will have some questions. I might give you one question in advance. I would ask how your bill differs from several of the others. I'm sure you've compared them. So, when you've finished your statement, that would be a question we could start off with.

Senator BOREN. Mr. Chairman, let me also mention that I would be happy, in conserving the Committee's time, if any Members of the Committee would want to address questions to me that I could reply to in writing—I know you are very pressed with the many witnesses that you have—we would be happy to handle any questions in that way to fill the record and to clarify any provisions of the bill that might need clarifying.

The CHAIRMAN. Well, Senator Boren, we appreciate your offer. However, I'm sure there will be some questions for you, and then other questions will go to you in writing. You will have plenty of time to respond.

TESTIMONY OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman. I want to commend you again for calling these hearings. We are dealing here with the very heart and soul of our democratic political process; that is, the election system itself. It is the fundamental building block on which the entire integrity of the system rests, and that's why it's so crucial and important that this matter be placed on the national agenda. And I feel honored and privileged to be joined by Senator Byrd, a principal sponsor of this legislation. He as much as any Member of this Senate understands its role as an institution in our government—he understands its history; he approaches this problem with perspective; and I think he clearly sees how the increasing cost of campaigns is eroding not only the entire political

process, but especially the effectiveness of this institution, the United States Senate, of which we are a part. More and more time and effort and energy of Members is being spent not grappling with the problems that we were elected and sent here to solve, but in trying to find a way to finance the next election campaign.

So it's a real privilege for me to be joined by him, and to have the perspective which he brings to this Committee today.

Almost a third, thirty-three Senators, have now joined in sponsoring this legislation, and many others have indicated that they are likely to join as sponsors in the near future.

There's a strong feeling that this matter should be at the top of the national agenda. It is one of the serious problems that we simply must consider in this historic 100th Congress.

This bill, S. 2, establishes Senate general election spending limits through a voluntary system of partial public financing similar to our current presidential system.

The momentum toward reform by the Senate in the 99th Congress as evidenced by their passing the Boren-Goldwater amendment 69 to 30 has only been magnified as we reflect upon the effect of the 1986 elections. What happened in the 1986 elections has opened the eyes of the American people and led to a strong cry all across this country for reform.

It seems to me that the basic issues which cry out for reform are, first, the overall spending required to win a seat in the Congress is out of control. Second, the faster growing source of these funds is from narrow, special interests instead of from the grassroots contributors back home. And, third, tragically the tidal wave of special-interest money is being used mainly to finance negative advertising that is further alienating Americans from the political process.

Ten years ago, as has been said, the average cost of winning a seat in this body was just over \$600,000. Last year the rate rose fivefold to a level of over \$3 million. How high will we allow campaign costs to escalate before we take action?

Contributions from political action committees in just one election cycle to the Congress have gone from \$104 to \$140 million. And, as Senator Byrd has, I think, said very well, we are not here criticizing those who participate through political action committees; we are not here branding those who are involved in making those contributions or in leading those committees as evil. We are talking about the process that is wrong, a process that is out of control.

Further, in 1982 ninety-eight sitting Members of Congress were elected with over half of their campaign funds coming from political action committees. In 1986 that number went up to 188, roughly a third of all the Members of Congress receiving over half of their contributions from that source. At that rate, in another four years, 51 percent, over half of the Members of the Congress of the United States, will have received half or more of their campaign funds from that source instead of from the small grassroots contributor back home.

I would share with you, Mr. Chairman, that recently I was speaking to a group, and a person in all seriousness said to me, well, a Member of Congress had said to him that he thought it was

awfully nice we could raise all that money here in Washington—he had raised about 90 percent of his money here in Washington—and it had saved him the embarrassment of going back home to the people in his home state, in his home district, and asking them to make the sacrifice necessary to make contributions to his campaigns. And he said, didn't I agree with that, that it was nice that we didn't have to embarrass the people back home in asking them to contribute at the grassroots any more to campaigns. And I said to him, well, thank God the Constitution requires that we bother them about voting in the elections; otherwise we could just settle it all here in Washington and never have to go back and bother the people back home in participating in the process in any way whatsoever.

No longer can the Congress throw up its hands at the problem of campaign finance. We must take the lead in reforming our election laws which for too long have grown into an incumbency protection system. With Members of Congress receiving over 75 cents out of every PAC dollar contributed, we can hardly describe our current system as being open to new blood. And with the complex difficulties, with the budget deficit, trade imbalances and challenges in foreign policy, we should not stifle the only tool, our election process, which helps to build strong bonds of our democratic process.

As the Committee recalls, my involvement in these deliberations began in October of 1985 when we began to try to bring campaign finance reform legislation to the floor as an amendment. That effort was prematurely ended in August of last year, after the Senate overwhelmingly approved the amendment, which I offered with Senator Goldwater, due to the inability on our part to end prolonged debate and with time running out on the calendar. At that time I had centered the first-step efforts in this amendment by addressing the primary symptoms of the illness which plagues the institution. That, of course, is the exponentially growing dependence of Members on PAC's for their campaign financial support and the corresponding neglect of small grassroots supporters who are directly involved in the process.

In addition to addressing the problem of the sources of campaign funds, Mr. Chairman, we believe that we must also face up to the need to control the fundamental illness itself, total campaign spending. There's only one way in which to practically limit campaign spending while staying within the confines of the 1976 Supreme Court decision, *Buckley v. Valeo*.

And I know, Mr. Chairman, from talking with you and from talking with others, there is reluctance on the part of many to turn to the public financing or partial public financing device as a means of solving this problem. But until the Supreme Court changes its mind, we must operate within the confines of *Buckley v. Valeo* as a practical matter if we are going to deal with this problem. And that decision says that the only way that you can really limit total spending is through the implementation of a voluntary system of partial—and I underline the word "partial"—public financing.

In that decision the Court stated in part—and I will put the rest of this quote into the record—"Congress may engage in public financing of election campaigns and may condition acceptance of

public funds on an agreement by the candidate to abide by specified expenditure limits."

By instituting such a system, as proposed in S. 2, we can see the opportunity for constructive debate by candidates and replace the multi-million-dollar negative campaigns now being waged to win Senate seats.

Further, the public funds reduce the risk of corruption and the appearance of corruption by controlling the role of private contributors which presently has the potential of being viewed as a quid pro quo.

There are four elements in the spending limitation portion of the bill. First, it is a strictly voluntary system applicable to Senate general elections, although it can and should be amended to cover primaries. And that could be done, Mr. Chairman, through a variety of means we can get into during your questions. You could simply condition the receipt of the public funding portion for those who have been nominated upon their willingness to also accept spending limits—I'm not talking about putting public funding into the primaries, but you could require that they also accept total spending limits during the primary cycle to be eligible to receive the partial public funding for the general election portion.

Second, qualification is very restrictive due to a high-threshold requirement calling for many in-state small contributions to the participating candidate whose election is then subject to the expenditure limit. Fringe candidates would not be able to meet that threshold requirement. There are two points to be made about the threshold here, Mr. Chairman. One, we use the potential partial public financing to encourage candidates to go back mainly to their home states with moderate and small contributors, to go out and to raise those funds. We don't say you can't raise funds from the private contributor; indeed we encourage it by requiring candidates to raise a threshold first. Secondly, we make sure that the fringe candidates are not covered. If you have someone that is purely a fringe candidate, they are simply not going to be able to go out and get the support from the number of contributors in their home state necessary to raise the threshold amount. This means that minor-party and independent candidates must have demonstrated a modicum of support, yet substantial support, in order to qualify. In the *Buckley* decision the Court stated, "If a party cannot raise funds privately, there are legitimate reasons not to provide public financing which would effectively facilitate hopeless candidacies." In other words, this system that we propose in this bill would not encourage fringe and other fragmented kinds of candidacies without any modicum of support.

Third, campaign funds from small contributors will not be displaced by public funds, as I mentioned. In fact, private contributors are more likely to contribute to candidates as they seek to meet their threshold requirements. This should reverse the sharp decline in the number of small contributors from the home states of Members of Congress who are participating in the process.

Fourth, the system has a ceiling on funds available from the Senate general election campaign fund. Once a non-participating candidate exceeds the limit, the state spending limit is lifted. S. 2 provides incentives to participate in following the spending limits

by reassuring candidates that they will not be trapped within the spending limits if their privately financed opponents exceed these limits. So if you have a situation where your opponent is not abiding by the limit, you will have not only your share of public match, but also the share that normally would be allocated to your opponent. And if your opponent has exceeded even that amount of funding that has been available to you, the limit comes off, and you can go back to raising private funds as well. This should discourage your opponent from exceeding those limits. In the absence of such a provision, public financing would be a less attractive option for candidates, because you would be locked into a limit and you might face an overwhelming advantage to someone on the other side who is not abiding by the limits. Also it leaves non-participants free to raise money from private sources without any expenditure limit. Under the test established in *Buckley*, a public financing system is constitutional if non-participants are left in the same position as if the system did not exist. Of course, we do allow non-participants to continue to raise private funds.

In 1980 a three-judge court found in the case of the *Republican National Committee v. Federal Election Commission* that Congress may create a new optional alternative to existing methods of funding, and that a candidate is free to turn down the alternative if he or she feels that existing methods provide greater opportunities for communication and association.

As well as placing limits on general election campaign spending, S. 2 places limits on PAC contributions as did the legislation I offered with Senator Goldwater last year. The aggregate limits of S. 2 are essentially the same, and for the same reasons as offered in the bill last year, which was discussed before this Committee at that time.

Staggering growth in this source of campaign contributions, which is aligned to support particular interests, has increased the ability of those interests to bring pressure to bear on both candidates and officeholders. Further, the growing practice of double-giving—PAC's contributing to competing candidates in the same race—provides further insight into the appropriate role of PAC money. In nine significantly challenged races last year, there are 494 examples of double-giving by the very same organizations to the opposing candidates. This suggests that these groups are really giving to gain influence with successful candidates or the current officeholder rather than operating to express a philosophical or a political view; they are giving to both sides because they are worried about being left out on access later on.

And I might say, Mr. Chairman, that it is also the political action committees, the business groups and the labor groups themselves, that are beginning to be victimized by the process. One group is played off against another. People come to one group and say did you know your competing interest group has given so you had better get on board yourself. One group is being played off against another. And really those who are giving, those who are part of the PAC process, as well as the candidates on the receiving end, are all being victimized by the way the process is now being operated. It is a dehumanizing process for everyone involved, and it is becoming a growing burden to the business and labor communi-

ties and to those groups that have formed groups in the past. They are really forced into the situation now in what really comes to be less than a voluntary manner.

While I would not suggest that a \$5,000 or \$10,000 contribution can buy a vote of any of our colleagues, at the same time it's naive to believe that these contributions are not exerting some influence—and I think some significant influence—on the political process. As has been said, for one thing, just spending the time raising money means that that time can no longer be spent visiting with constituents, especially those who are average citizens, who cannot contribute large amounts of money to the political process. If thirty days are spent in Los Angeles, Miami, or New York by a Senator from another state raising money, that thirty days simply cannot also be spent going back home, walking up and down the main streets of communities and through neighborhoods listening to the problems of average Americans in our home states and districts. And it is fundamentally distorting the representational nature of our political system.

Mr. Chairman, without taking this time to expound upon all the aspects of the bill, let me say they are equally important and by no means a total answer on how to reform this system, as Senator Byrd has said. We regard this as a starting point. The problem is easier to define than the solution is to craft, and you and the Members of this Committee bring extreme talent in this area, and I know you'll have much to contribute to this process.

And let me just say, as one of the authors of this bill, I welcome that contribution. I welcome constructive suggestions on how we can improve this legislation. Certainly we do not view it as written on stone tablets. This is an important beginning point, and I hope and I believe that we have, as Senator DeConcini said, a real opportunity to pass legislation this year. We welcome the constructive input of this Committee and our colleagues in the Congress on this matter.

We have included a provision to close the bundling loophole; we've included a provision to clarify the definition of "independent expenditures" so that we don't have those claiming to be independent that are really in collusion with a candidate; we have provided an aggregate limit on the amount of PAC contributions that a national party can receive. In that regard, as you recall from last year, after the approval of the amendment I offered with Senator Goldwater, it was subsequently amended by the Boschwitz amendment which was approved by a vote of 58 to 42. It contained a provision dealing with PAC contributions to national parties. S. 2 likewise contains language to limit what our national party committees may accept in the aggregate from political action committees.

In that spirit of bipartisanship and with the desire for quick cooperation from both sides of the aisle, it is our hope that we can move in a unified way to deal not with a Democratic problem, not with a Republican problem, but with an American problem, and, indeed, with an American crisis.

Mr. Chairman, how can this institution effectively serve the needs of the people it represents, when the central concern centers around raising millions of dollars for re-election campaigns? The danger to the political process lies in the fact that Members of Con-

gress must relegate solving these problems to the back burner so that we can work each day to raise money.

Since its introduction just over eight weeks ago, I have encountered many Members who are seeking constructive ways to improve and strengthen S. 2, and, while I have not had an opportunity—and you said in the beginning you hoped I would touch on some of the other proposals that have been made—I've not had an opportunity to thoroughly review all the other bills that are before us. Some of these proposals involve strengthening the penalties provisions of the Federal Election Campaign Act. We do not specifically address that in our bill, and, Mr. Chairman, I think that is an area that could very appropriately be addressed as we look at a bill that we hope will be comprehensive in nature when it's finished.

We do not really address the problem of "soft money." There was some feeling that we might simply strengthen the reporting requirements, disclosure requirements, for how "soft money" is being spent. That did not seem to be a full and adequate solution. At the time that we introduced the bill, we simply weren't able to come to a final conclusion as to how to deal with that problem. There are some suggestions before the Committee in that regard, and, again, I think that is an area that would responsibly be on the agenda for Committee consideration. I think that whatever we do has to be balanced. Senator Helms talked about the use of so-called "soft money" by labor groups. I think we have to recognize that corporations also, by loaning services, by loaning personnel, by having these services often valued at less than full market value, by spending corporate funds to create political action committees, also engage in the practice of "soft money" contribution. And whatever we do in that field, as indeed whatever we do in the whole area of campaign finance reform, must be balanced. I don't think any of us want to see a system which upsets the balance or prefers either business or labor or any other group within the political process. What we are looking for is impartiality and objectivity.

And so while we have not specifically addressed the problem of "soft money" in the bill, there are other proposals before your Committee to do that. But I would urge you to do it on an even-handed basis, as you do look at it.

There are issues such as the FEC's allocation of polling expenses—Regulation 1, CFR 106.4, which allows other than a fair market value to be placed on donated polls to a candidate. That's something else not dealt with; it may well be dealt with in other proposals before you that should be examined. We have a system now that allows polls to be greatly undervalued, especially if they are more than ten days old.

Very complex accounting methods are now allowed which under-value in-kind staff services and other services through the so-called separate segregated funds—and this also should be examined, particularly as we make sure that we don't have an unfair balance between certain segments of our economy as we deal with the problem of "soft money."

We have dealt with and attempted to deal with the problem of independent expenditures in that we do provide for an increase in the kind of disclosure required. If 30-second spots are bought by so-called independent groups and they are attacking a candidate, the

name of the interest group paying for the spot must be run continuously through the entire 30 seconds in large enough type for people to read it. I think that's going to make it much less likely that you will see these actors on the television screen with sometimes very mean 30-second spots without the people realizing that someone with an ax to grind is paying for it. Our proposal should reduce that significantly.

We also provide that if an independent group spends more than \$25,000 against a candidate, there will be matching funds provided out of this voluntary check-off fund to the candidate who is being opposed to be able to combat that.

We have also provided an additional incentive, I might say, Mr. Chairman, to candidates to accept the voluntary limit. In addition to the fact that if one candidate accepts the voluntary spending limit and the other doesn't, that candidate becomes eligible to receive the funds that would have gone to his opponent. That's a very strong incentive.

We also provide preferential advertising rates in media only to those candidates who accept voluntary spending limits.

And so there are some very significant incentives built into the process.

We've not tried to cover all of the other elements, as I say—reform of the FEC system. I know there is some discussion by Senator Cranston and others before you—Senator Mitchell has had the discussion of a matching funds approach; ours is not strictly a matching funds approach, but it is in one sense that because a threshold is required before you can qualify to receive the Federal share. There are others who have dealt with and are preparing proposals—I believe Senator Cranston and others—that deal with registration and other parts of the process.

We have focused really strictly on the campaign financing question itself with the dual thrust of the bill, trying to shift the balance away from the political action committees and groups back—some balancing, not abolishing these efforts, not making them illegal, not branding them all as in any way inherently evil, but to return some balance to the process by requiring that 80 percent of the threshold funds shall have to be raised from small contributors, \$250 or less, from inside the home state of the particular candidate. And the other thrust, of course, is dealing with the problem of spending limits.

There are ways to expand and improve this legislation. I qualify that: we realize this is only a first step; no more can we claim the convenience of endorsing a bill, it's just a working draft and nothing else. Clearly we are dealing with something much more than that. A third of the Members of the Senate have put their names on this bill not because they just like the concept but because they like many of the detailed proposals contained in this bill. It's time to face the issue head on, and I'm hopeful that this Committee will bring a bill like this—perhaps this bill with appropriate modifications deemed advisable by the Members of this Committee—to the full Senate in the very near future. And we are anxious to help in that process in any way that we can.

I think action must be taken quickly to bring about reform, to restore the trust of the American people in the most fundamental

institution of our entire system, and that is the election process itself. That trust simply must be restored. And I think all of us—I know from talking with the Chairman, I know his deep concern about this matter, I know that Senator Stevens shares this concern as well, that one of the saddest things we've seen happening is the reduced participation of the American people in the political process. We are simply not seeing as many people participate, vote, get involved in the process that should be getting involved. And I think a lot of that has to do with the perception that the average citizen out there, without an ability to bring in a huge amount of money and put it into the political process, simply doesn't have much voice any more. I think that perception is wrong, but I think it is a perception we must act to change if we are going to end the alienation of our own people from the process and if we are going to bring those people who have dropped out of the system back into it as full participants.

I thank you very much, Mr. Chairman, and I appreciate your allowing us to impose on your time and that of the Members of the Committee this morning.

[The prepared statement of Senator Boren follows:]

STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Mr. Chairman, I appreciate the opportunity to come before you today and discuss an issue of vital importance to this country. As indicated by the number of Senators speaking before this committee today, the issue of campaign finance reform has moved to the forefront of national debate.

Majority Leader Byrd and I, along with 31 other Senators have put forward S. 2, a bill to establish Senate general election spending limits through a voluntary system of partial public financing—similar to our current Presidential system. The momentum toward reform by the Senate in the 99th Congress, as evidenced by their passing the Boren-Goldwater amendment 69-30, has only been magnified as we reflect on the effect of the 1986 elections.

It seems to me that the basic issues which cry out for reform are: (1) the overall spending required to win a seat in the Congress is out of control; (2) the faster growing source of those funds is from narrow, special interests instead of from grassroots contributors; and, (3) tragically, the tidal wave of special interest money is mainly being used to finance negative advertising that is further alienating Americans from the political process.

Ten years ago, the average cost of winning a seat in this body was just over \$600,000. Last year, the rate rose five-fold to a level of over \$3 million. How high will we allow campaign costs to escalate before we act?

The contributions from political action committees—in just one election cycle to the Congress have gone from \$104 to \$140 million. Further, whereas in 1982, 98 sitting members of Congress were elected with over half of their campaign funds coming from PACs, in 1986, that number went up to 188! At that rate, in another four years, 51% of our Congress will have half or more of their campaigns financed by special interest groups.

No longer can the Congress throw up its hands at the problem of campaign finance. We must take the lead at reforming our election laws which for too long have grown into an "incumbency protection system." With members of Congress receiving over 75 cents of every PAC dollar contributed, we can hardly describe our current system as being open to "new blood". And with the complex difficulties with the budget deficit, trade imbalance, and challenges in foreign policy, we should not stifle the only tool—our election process—which helps build the strong bonds of our democratic process.

As this committee recalls, my involvement in these deliberations began in October 1985, when I announced my intentions to bring campaign finance reform legislation to the floor of the Senate as an amendment. That effort was prematurely ended in August of last year after the Senate's overwhelming approval of the Boren-Goldwater amendment, due to threatened filibuster and a shrinking calendar. At that

time, I had centered my "first-step" efforts by addressing the primary symptom of the illness which plagues this institution. That, of course, is the exponentially growing dependence of members on PACs for their campaign's financial support and the corresponding neglect of small, grassroots supporters who are *directly* involved in the process.

In addition to addressing the problem of the sources of campaign funds, we believe we must also face up to the need to control the fundamental illness itself—total campaign spending.

There is only one way in which to practically limit campaign spending while staying within the confines of the 1976 Supreme Court decision, *Buckley v. Valeo*, and that is through the implementation of a voluntary system of partial public financing.

In that decision, the Court stated:

"Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public financing." [424 U.S. 1, 57 n.65 (1976)]

By instituting such a system as proposed in S. 2, we can see the opportunity for constructive debate by candidates, and replace the multi-million dollar, negative campaigns to win a Senate seat.

Further, the public funds reduce the risk of corruption and the appearance of corruption by controlling the role of private contributors, which present the potential for quid pro quo.

There are four key elements to this spending limitation portion of the bill.

(1) It is strictly a *voluntary* system, applicable to Senate general elections—although it can and should somehow cover primaries.

(2) Qualification is very *restrictive* due to a high threshold requirement calling for many in-state, small contributions to the participating candidate—whose election is then subject to the expenditure limit. Fringe candidates would not be able to meet threshold requirements.

This means that minor party and independent candidates must have demonstrated a modicum of support. In the *Buckley* decision, the Court stated: "If a party cannot raise funds privately, there are legitimate reasons not to provide public funding, which would effectively facilitate hopeless candidacies."

(3) Campaign funds from *small contributors* will not be displaced by public funds. In fact, private contributors will be more likely to contribute as candidates seek to meet threshold requirements. It should reverse the sharp decline in the number of small contributors from the home states of the members of Congress.

(4) The system has a ceiling on funds available from the Senate General Election Campaign Fund. Once a non-participating candidate exceeds the limit, that state's spending limit is lifted.

S. 2 provides incentives to participate in following the spending limits by reassuring candidates that they will not be trapped within the spending limits if their privately financed opponents exceed these limits. In the absence of such provisions, public financing would be a less attractive option for Senate candidates. Also, it leaves non-participants free to raise money from private sources, without any expenditure limits. Under the test established in *Buckley*, a public financing system is constitutional if non-participants are left in the same position as if the system did not exist. In 1980, a three-judge court found in *Republican National Committee v. FEC* that Congress may create a new, optional alternative to existing methods of funding, and that a candidate is free to turn down the alternative if he/she feels that existing methods provide greater opportunities for communication and association.

As well as placing limits on general election campaign spending, S. 2 places limits on PAC contributions as did the Boren-Goldwater legislation. The aggregate limits of S. 2 are essential for the same reasons today.

The staggering growth in this source of campaign contributions, which is aligned in support of particular special interests, has increased the ability of those interests to bring pressure to bear on both candidates and officeholders.

Further, the growing practice of "double giving"—PACs contributing to competing candidates in the same race—provides further insight into the inappropriate role that PAC money is playing in Congress. In 9 significantly challenged races this last year, there were 494 examples of "double giving". This suggests that PACs are giving to gain lobbying influence with the successful candidate or current office holder, rather than to express a political view.

While I would not suggest that a \$5,000 or \$10,000 PAC contribution can "buy" a vote or votes of a colleague, it is naive to believe that PAC contributions are not exerting significant influence on the political process.

Mr. Chairman, without taking this time to expound upon the other main aspects of this bill, let me say they are equally important and by no means the total answer on how to reform this system. We include a provision to close the "bundling" loophole, to clarify the definition of "independent expenditures" and to provide an aggregate limit on the amount of PAC contributions that a national party can receive.

As we recall from last year after the approval of the Boren-Goldwater amendment, the subsequent Boschwitz amendment was approved by a vote of 58 to 42. It contained a provision dealing with PAC contributions to national parties. S. 2 likewise contains language to limit what our national party committees may accept in the aggregate from PACs. In the spirit of bi-partisanship and with the desire for quick cooperation from both sides of the aisle, it is my hope that we can move in a unified way to deal not with a Democratic problem, not with a Republican problem, but with an American problem, indeed with an American crisis.

Mr. Chairman, how can this institution effectively serve the needs of the people it represents when its central concern centers around raising millions of dollars for re-election campaigns?

The danger to the political process lies in the fact that Members of Congress must relegate solving the problems of this country to the back burner, so that they may take time out *each day* to raise money. As we have too well seen, this money often comes from special interest groups or political action committees, often led and directed by people outside the members' home state. This certainly raises questions as to whether the people back home can be said to have representation which first gives priority to their needs and views.

Since its introduction just over 8 weeks ago, I have encountered many members who see constructive ways to improve and strengthen S. 2. These include strengthening the penalties provisions of the Federal Election Campaign Act and addressing how to deal with "soft money". Further, we should review such related issues as the FEC's "Allocation of polling expenses" regulation [11 C.F.R. § 106.4] which allows other than "fair market" value to be placed on donated polls to a candidate, as well as their 1984 Advisory Opinion in which the FEC set up two methods of paying for in-kind staff services through "Separate Segregated Funds".

While I see ways to expand and improve this legislation, I qualify that by saying that no more can we call this or any bill, a "first step". No more can we claim the convenience of endorsing a bill as a "working draft". Thirty-three Senators have not put their name on this bill only because they merely "like the concept." It is time to face the issue head-on. I am hopeful that the Committee will bring this bill to the full Senate in the very near future and am anxious to help in that process. Action must be taken quickly to bring about reform to restore the American people's trust in the most fundamental institution of our Democracy—the election process.

The CHAIRMAN. Thank you very much, Senator Boren. We've gone almost two hours, from 9:30 to almost quarter after 11, and there are others who are waiting to testify. I appreciate your offer to accept questions in writing and return them in writing; however, I have just a couple of little ones here that you've stirred my interest on.

You've tried to accommodate public financing. That may be the Achilles' heel, because there is some resentment as to its being another tax, or that money is coming out of the general fund. There's some concern that if you change the \$1 check-off to \$2 in the presidential race, that that would dilute that sum. I know you've done exhaustive research on that, and I know, as the courts have said, you have to have some public financing in your bill to make it work; on the other hand, it has to be on a voluntary basis.

So can you tell me how you think this will fly with the general public? I've seen all kinds of polls, and I've yet to see a poll that says they want their tax dollars used to elect us.

Senator BOREN. Well, Mr. Chairman, I think, first of all, we do need to emphasize that the system is still a voluntary system even in regard to the check-off. And the experience has been with the

presidential funding that check-off has in fact run a surplus; in other words, much more money has been coming into the process. And I think that indicates a desire on the part of the people to participate in that process.

Let me be very honest with you. As you know, the original legislation that I joined with Senator Goldwater in introducing last year, the year before that, did not involve public financing. I personally have had grave problems with the concept of public financing. I was brought up in a family where you were taught not only that you should be involved in politics as a voter—at a very early age I was sent out on my bicycle to tack up posters and hand out handbills and be involved in the process; and I was also taught that if you believed in a candidate, you should not only vote for them, you should campaign for them and you should contribute to them within the bounds of your ability to afford to be able to contribute. And I've always believed that if you could just get a person to contribute \$5 to your campaign, that more important than getting the \$5 you got their involvement, their interest, their participation. People who contribute to campaigns, every study shows they are far more involved, knowledgeable about the issues, knowledgeable about the candidates; they get involved, they make an investment—they get involved. It's healthy.

And there's a strong feeling on my part that we don't want to displace that kind of very, very wholesome citizen involvement by simply saying let's have the government—even if it's through a voluntary process—and I don't know that I would call it a tax, because it is a voluntary check-off. So what we've tried to do here—and yet we're caught. I had the experience I will tell you. My father, who has passed on many of these values to me, he said to me a couple of years ago when I was working on campaign finance reform—he said, "You are so right, but I hope one thing you'll never do; I hope you'll never be for public financing. I'm dead set against that."

Well, I sat down with him not too long ago and went through the process of with what we are faced because of the Supreme Court decision. Because of the Supreme Court decision, we simply don't have any way of putting a limit on total spending unless we have at least some kind of partial public financing as a part of it. It has to be a voluntary system and there has to be some incentive for people to accept that limit.

It was interesting, after I walked through that with him, because poll after poll shows grave concern about how total campaign spending is too high, how too much of it is from special interests, how people are so turned off by how this wave of money is being spent. And so you have a huge majority of the American people—and there was a vote in Arizona, by the way, in the last election, on the ballot, a proposition on the ballot that was very much like the amendment that Mr. Goldwater and I offered last year, but at state level, putting the same kind of limits on. It passed overwhelmingly. It shows that people want reform, they want change.

Now, I think what we have to go through with the public is that when the people realize that the only way to get effective spending limits, to get the process under control, is to have some modicum of partial—and I emphasize the word "partial"—public financing, I

think the people overwhelmingly are going to be willing to accept that trade-off, because I think they see that what's happening now is absolutely destroying the process.

What we try to do—and, frankly, there are some more things; we've had suggestions made in this Committee, there will be proposals, I'm sure—if they are not already introduced and before this Committee, they will be by other Senators who've talked with me—we've tried to not replace the private contributor with public financing. We've said you have to raise this threshold. And, by the way, in the primaries—you will still be raising your money in primaries totally from private sources. Now, what would be a wonderful thing is if we could figure out a way—and perhaps there's a way of modifying this bill to do this—to say you will only get your public financing share in the general election—one, you have to meet the threshold, that puts you back to your small contributor in your home state, keeping the private process involved, the private contributor; but you also may have to accept some kind of spending limit on your primary—you wouldn't get public funds in your primary, but you'd have to say, to qualify in the general for your public funds, I'm going to abide by a limit of how much I will spend per voter in the primary as well.

So, in other words, we may really still be able to have very significant involvement of the private sector in this process with a reasonably modest amount of public funding, of public share.

And I think that is what we have to stress, Mr. Chairman. I know your feelings about it, I know your concerns—but we have to stress that it is a trade-off to get total spending; we underline the word "partial," we are using it to encourage small contributions. And some have said—and, as I say, there are bills that will be offered to suggest that maybe you should only get 80 or 90 percent of your spending limit in the general election rather than 100 percent at the time you are nominated and have raised your threshold. That, again, would encourage going back to more small contributors in your home state during the cycle itself of general election.

The CHAIRMAN. Senator, I don't have another short question, so I'm going to yield to my distinguished friend. I do have several questions—such as independent expenditures that occur in presidential elections, and the exclusion of smaller PAC's that are very effective, and want to be involved. I will put those questions to you in writing, and I yield to my friend, Senator Stevens.

Senator STEVENS. Well, Mr. Chairman, I'm glad my good friend, the Majority Leader, is still here because I heard what he said, that, "Gone are the days that money was in suitcases and that we dealt with cash." The 1971 Federal Election Campaign Act was the answer, we thought. As a matter of fact, right after the decision in *Buckley v. Valeo*, I introduced a constitutional amendment to allow the Congress to set campaign expenditure limits.

Senator BOREN, do you know that neither House has ever held a hearing on a constitutional amendment to limit expenditures? If the public really supports your point of view, why shouldn't we just turn to the public and say, "Give us the authority to limit expenditures"?

Senator BOREN. Well, I would say, Senator Stevens, I happen to support that proposal for a constitutional amendment as well, but

we simply know how long it takes sometimes to get a constitutional amendment adopted. I think we need to go ahead and address it in the meantime, but I certainly don't have any disagreement with you about the need to do that.

Senator STEVENS. Well, I sat here and listened, and it seems that what we are talking about is to find a way to spend more money but to get it from a different source. And I'm impressed with your statement that if one person spends more than the limit, then the limit comes off. That to me would be probably in September—my primary is in August. Do you think I would really like to be out contacting PAC's in other states when my opponent is spending his money, though I've got no limit on what I can go raise then, rather than campaign?

Senator BOREN. Well, I honestly don't think that's going to happen. We put that in the bill because you have to have a provision for that if anything like that should happen. But I think by the time we get through these considerations—you and your opponent are both looking at this system; if you accept the spending limit and he doesn't, then you automatically are eligible for his share.

Senator STEVENS. Automatically I can spend twice as much as you think I should have spent in the first place, and the voters are going to say, "Why are you spending so much money?"

Senator BOREN. Let me say this. No, if the limits of our bill are adopted, the total spending would be far less than half of what was spent per candidate in the last election cycle. You can't ratchet the limits down just too far; if you put them all the way down—let's say if you would only allow someone to spend \$100,000 in Alaska running for the Senate, or in Oklahoma, just to pick a figure. That limit would be so low that we would really favor an incumbent, then, because name recognition that an incumbent has, the ability to become known during the term would simply not allow a challenger the opportunity—I think you have to leave the figure high enough to allow a challenger a chance to get known and to mount a campaign, but significantly—even if in the few cases your opponent didn't take it, I think 90 percent, more than 90 percent of the candidates, are going to voluntarily accept these limits. When they look at these incentives, it's kind of like an offer you can't refuse to accept.

Senator STEVENS. Let me tell you where I leave you. I last ran in 1984. In 1984 there were 4,000 PAC's; 3,000 of them contributed to candidates in congressional races; only 369 of them made a \$5,000 contribution to a Senate candidate; only 117 of them contributed more than \$5,000. You talk about narrow special interests. In your state there are many, many millionaires. I don't have that many millionaires; I do take PAC contributions—but the contributors to the PAC's are individual employees putting in their after-tax dollars. Now, in 1984 all Republican congressional candidates who were incumbents received 70.8 percent of their financial support from individuals, 21.4 percent from PAC's, and 6.3 percent from parties. In the same year the Democratic congressional incumbents got 62 percent from individuals, 28.9 percent from PAC's, and 3 percent from parties. The idea that PAC's have taken over the political process is wrong in the first place, but beyond that the idea

that PAC's are narrow special interests, in my judgment, is wrong. They have the broad support of individuals who are contributing their after-tax dollars. A company that does business in my state, drills the oil in my state, and takes it out and markets it all over the country, the employees of that company contribute to a PAC. Instead of having a contribution from an individual who has income from that development, we are dealing with contributions from the employees of the energy corporation via the Political Action Committee—they contribute through the PAC. And do you know what they can contribute? The maximum is \$5,000 from the PAC to my campaign, collectively. Those people who own the royalties, they can each put in—every member of their family can contribute a thousand dollars.

I do not believe it's right to let the public believe that PAC's are narrow special interests. They are associations of employees, or groupings of people who have a common interest. They are not narrow special interests. Instead, I think if we do away with PAC's, we will then see associations of individuals get together and make their individual contributions in a way that returns us back to the equivalent of "cash in suitcases." And I thought we really reformed in the past, and now it's working.

The real problem is with campaign expenditures, not where the money is coming from—but the amount that is being spent by candidates. I share that concern with Senator Byrd—in my first election for the Senate we spent \$32,000, and I think \$28,000 of it was my own money. And I'm not very wealthy, as you know.

The impact of the growth of campaign expenditures is that during my last campaign in Alaska, it cost almost \$2 million.

I think you gentlemen are focusing on the wrong problem. The public is mad that we are spending so much money to run for office, not where it's coming from. And I hope that we come back to the problem, which in my view is the ruling in the *Buckley v. Valeo* case. Why don't we address the expenditure limitations and get the constitutional authority for Congress to limit those expenditures? If you had that, you and I wouldn't be arguing over the source of campaign money.

Senator BOREN. Well, Senator Stevens, as I've told you, I agree with you strongly on one point; that is, we should get the constitutional authority back to do that. And I've been a cosponsor of those proposals and will be in the future. I don't look at that, though, as a reason not to go ahead and take action, because that process takes a long time. Let me say, this bill does not just focus on the source; this bill does focus on the problem of total spending. That is exactly the reason why we have come into what I have called to Senator Ford this very partial system of public financing so that we can, until we get constitutional authority, act now to put voluntary spending limits in place. And that's exactly what this bill does: it puts voluntary spending limits in place so that we can get the total spending under control.

Senator STEVENS. My last comment, my friend, is this: your bill, if we passed it now, would not become effective in time to limit the 1988 races; a constitutional amendment can be passed in this Congress so that it would in fact impact on the 1990 elections.

Senator BOREN. It would be effective; it would be in time.

Senator STEVENS. You said one year after enactment. It's not going to happen, you are not going to have this become effective in the middle of the 1988 election cycle.

Senator BOREN. The election that occurs one year after. And again I would say that I think it's highly unusual in the process—I don't think that we can afford to wait on the highly hypothetical possibility that there might be a constitutional amendment to do something about this problem.

Senator STEVENS. You miss my point. This proposal becomes effective a year after it's enacted.

Senator BOREN. Let me say—

Senator STEVENS. And you would not put it into effect in the middle of the 1988 elections; it's not possible to impose it in July or August or September of 1988.

Senator BOREN. If we were to pass it now, it would be effective for the next election; it would be effective for the election that ensues one year—if we were to pass this today, the election which occurs a year or more after this date is the next election.

Senator STEVENS. Well, if I were God, I might do away with the bill, but, as a practical matter, you are not going to get it done today, you are not going to get it done at the earliest until August, and a year from August means you are going right in the middle of the election.

Senator BOREN [continuing]. Would be effective, and I hope and pray we can get moving on it, because I've been confronted every time that I've made a proposal—and Senator Byrd has been offering proposals years before I ever came to the Senate—every time you are confronted by people saying, "Let's just wait till one more election," "I'm running this time, I'm having to go out and raise this money," "I don't want to offend anybody by offering reform." "Wait till just after I'm elected, then I will be with you."

The problem is, as we know, all but roughly sixty-six people out here in the House and Senate are all within two years of election every year. So we must go ahead and act.

But let me point out one thing that you are talking about, sources—and I'm going to take the message back to Oklahoma, you referred to our millionaires, I'm glad you didn't use the past tense—the Senator from Alaska understands exactly what we are going through, he's going through the same thing we are; we are fighting now between Alaska and Oklahoma as to which state is having the greatest reduction in bank loans outstanding and the rest, as our economies are in real trouble. But I think that there is some essential difference. I'm not against all PAC's, I'm not here to tell you that all PAC's violate grassroots participation. Some of them really do involve their employees, just as you've said—some do, some don't, some really are run by three or four people here, lobbyists here who decide who it is important to have access to.

Senator STEVENS. Contributions to Federal election campaigns represent "after-tax" money.

Senator BOREN. Well, but I think that you have to be very concerned. I don't think that it is healthy, I don't think it is healthy when Members of this body—and they are forced into it by the process. Senator Byrd said himself it's a bad situation. Many Members especially from small states where there are not many finan-

cial means available—and I don't hold myself out—just because I follow the policy I have followed in the past—let me say candidly, I said it publicly—if I were facing a candidate financed with millions of dollars of special interest money and so on, I'd have to accept it, too, in order to compete. People are thrust into the process, not because they want to be there. We talk about grassroots involvement, people joining together, contributing to candidates they believe in in these contested races—hundreds of thousands of dollars given to both sides. Now, it's very clear that the PAC's themselves are being victimized themselves in that process. They are being forced to give to both sides in order to have access, to be sure they are not—

Senator STEVENS. Senator, I don't understand that. PAC's are merely collections of people who are both Republicans and Democrats, they raise the money, and they say contribute to both this candidate and that candidate. You actually have people voting where the money goes, to Republicans in one PAC and Democrats in the same PAC.

Senator BOREN. With all due respect, I would say that there is certainly an obvious reason to me why some people are giving to both sides.

But let me say that also studies—Professor Soroff and others at the University of Minnesota—have found individuals and individual contributors can weigh the record of Senator Stevens on his entire record, if that person is an oil man, a banker, a lawyer, a labor member, a farmer, whatever he happens to be. Senator Stevens may not vote but half the time, or maybe less than half the time, for the particular professional group of which he's a part. But he may sit back and say I admire Senator Stevens, he's honest, he speaks his mind—just as he did a minute ago—he's the kind of man we need to stand up for us, and so I'm going to give him an individual contribution even though he only has a 30-percent rating, let's say, with the professional group to which I belong. Now, a professional group or a business group or a labor group or an economic interest group generally doesn't have that luxury; they say we are going to pick these five bills this year, we are going to rate Senator Stevens and everybody else on those five bills, and they have to be right three out of five times, that's the policy we are going to adopt—a lot of PAC's do this—to support. That's understandable. But it does not allow for a balanced judgment on an entire record.

And the other thing I frankly believe is—

Senator STEVENS. How do you square what you just said with the concept that PAC's are giving to both sides in a contest?

Senator BOREN. Well, there are two things that happen. You have people, number one, giving on the basis essentially—and I gave you several examples where that happened. But the more usual case is, rating systems that are adopted and a threshold requirement under a rating system to get a contribution. So that's one problem.

The CHAIRMAN. Has the Senator from Oklahoma ever been to a horse race?

Senator BOREN. Yes, I have.

The CHAIRMAN. Have you ever bet on more than one horse in a race—because you weren't sure which one was going to win?

Senator BOREN. I have.

The CHAIRMAN. That's a Kentucky theory I wanted to throw in here so we wouldn't get so intense. [Laughter.]

Senator BOREN. I think the Kentucky theory is becoming more widespread in the political system.

Senator STEVENS. I can show you PAC's who have contributed to my campaigns, where I've never voted their way on their legislative positions; they still contributed to my campaign.

Senator BOREN. Of course.

Senator STEVENS. Because they support the political process. Some of their employees say we want this candidate, other employees favor a different candidate.

Senator GORE. Well, they might think that horse is going to win.

Senator BOREN. They might think it's going to win. And I would just say this other thing, Senator Stevens: I don't think it's healthy, whether it's Oklahoma, West Virginia, Alaska—I don't think it's healthy for us to be put in a situation—and I say this is an involuntary situation—in which we are really having to go other places primarily or raising money other places. Somewhere there is a balance. Yes, PAC's have a legitimate part in the process; yes, people from out of state who are making contributions to candidates have a legitimate part in the process. But somewhere it gets out of whack. Where is that point? When a candidate for the Congress or the Senate starts to get 50 percent or more of his money from other places that have nothing to do with his home state, nothing to do with the people that vote in his district, nothing to do with the people that vote in his state? When it gets to be 60 percent, 70 percent, 99 percent, 100 percent?

At some point in time it's out of balance. And I think it becomes a threat to the grassroots political process.

Senator STEVENS. I just disagree with you. If we pass your bill, we will be back here four years from now still trying to figure out how to control the effort both to raise more money and to spend more money.

Senator BOREN. No, we wouldn't, because we would have it under limit.

Senator STEVENS. Your bill does not control campaign spending.

Senator BOREN. It does control spending.

Senator BYRD. Mr. Chairman.

The Chairman. Yes, Senator Byrd.

Senator BYRD. If we don't pass this bill, may I say to the distinguished Senator from Alaska, we are going to be back here four years from now. The Chairman referred to polls—those polls are going to change. The people of this country are getting tired of this thing, it's not a good system. We are not here today PAC-bashing. As I indicated earlier, a lot of PAC's represent in their viewpoints what may be the viewpoints of the majority of the people in the states.

But those of us who have to go out here and raise money in this money chase are not doing our duties to our families or to our constituents or to the institution of the Senate. You take the National Conservative Political Action PAC, NCPAC—they spent about \$300,000 in my state four years ago against me. It was an outside outfit, located over in the state of Virginia, which came in and

tried to tell the people of West Virginia how to vote for their Senator. I took them on head-on. I'll take them on again if they come back. I told the people of West Virginia that the state was going to be invaded by an outside outfit that would come in and distort the political positions that this Senator had taken.

What am I going to do if I run for re-election? I've already indicated that I have to resort to this fundraising.

So if we don't pass this legislation, may I say to my good friend from Alaska, we are going to be back not just four years from now but two years from now. The people are going to rise up. I'd be happy to join my friend on a constitutional amendment. I think that would be a good approach. I think Senator Hollings is advocating a constitutional amendment. I'd be a very strong supporter of such a constitutional amendment.

But in adopting a constitutional amendment, of course, we are talking about its effects being some years away.

In the meantime I hope that the Committee will report out this legislation, amended where it can be improved. And while I recognize good arguments on both sides here, what the Senators on the Committee are saying and what the Senators who appear at this table as witnesses are saying is that there is some justification for the arguments, but we've got to find a way out of this system. It's not good, although we have to live by it as long as we have it.

Thank you.

The CHAIRMAN. Thank you. I'm not a lawyer, Mr. Leader—sometimes that's an advantage and sometimes it's a disadvantage—but I'm not sure this piece of legislation, in my view, would stop so-called NCPAC's in the future. I just don't believe it will. It may be that you can prove to me that it will—and that will be a question I'll ask in writing.

Senator, do you have a question?

Senator GORE. Mr. Chairman, yes.

Senator BYRD. It won't stop them, but, under the provisions of this Act, the candidate will have some additional resources, too, to respond to such outfits.

The CHAIRMAN. That is true.

Senator GORE. Mr. Chairman, I'm going to be very brief because I will make a presentation here in just a moment, but I did want to briefly address one of the points that my good friend from Alaska made about PAC's being broad-based. Yes, they are broad-based in the sense that they have a large number of individuals who contribute to PAC's; and, yes, they play a useful role because they make it possible and practical for many of those individuals to participate who might not otherwise participate in the political process.

But even though they are broad-based in that sense, they are very narrowly based when it comes to the criteria governing the disbursement of the money. All of the people who contribute, tacitly or explicitly agree that their money will be released in behalf of a particular candidate on the basis of a very narrow set of criteria. And that point is not unknown to the recipient of the PAC funds.

And so I think that that is the common denominator between the Senator from Alaska's description of PAC's being broad-based

and the statement of the Senator from Oklahoma that they are special interest in a sense.

I want to commend the Senator from Oklahoma and the distinguished Majority Leader for coming forward with this legislation. I am a cosponsor of it, and I am very supportive of it. And I agree with the statements that have been made this morning.

And as I will be at the witness table shortly, I will not pursue other matters at this point.

Thank you.

Senator BYRD. Mr. Chairman, might I ask my colleague a question? If I'm correct that NCPAC spent \$300,000 in West Virginia, under this legislation what would such an attack mean to an incumbent who is attacked by this outfit?

Senator BOREN. Under this legislation, after NCPAC had spent \$25,000, the Senator would have been allowed, if they had spent \$300,000; \$300,000 with which to combat it. Plus if they had used it to buy 30-second spots against him, they would have also had to run the disclaimer throughout the 30-second spot.

I think what it means is NCPAC just would not have spent the money in the first place because they would have found it very unattractive for the Senator from West Virginia to have been given those resources to combat them, and very unattractive to have had to run those spots with those kinds of disclaimer throughout.

So what we would have done, by the threat of that matching hanging out there, we would have kept them from doing it in the first place very likely.

The CHAIRMAN. I understand, but it still doesn't prevent them from doing it. You have a deterrent there, but if they want to do it, they still can.

Senator BOREN. A deterrent. And I hope, Mr. Chairman, in getting ready to vacate and let you move in, just to say we don't feel we have presented you the perfect bill—but I would hope that this Committee would not allow the fact that this bill is imperfect to prevent us from doing what is possible and what would be good and what would be a marked improvement over the status quo. No bill we could ever report out is going to be perfect. We cannot possibly anticipate everything that is going to happen. We will have to come back and improve in the future after experience with any system we put out.

But let us not let that prevent us taking the first constructive steps that we can take.

The CHAIRMAN. Well, if there is any criticism of the legislation on my part, I guess, number one, you don't do enough to eliminate the negative ads. And I think we could go one step further. Senator Inouye and others have introduced a bill that I hope we might be able to incorporate at some time.

But we are going to have all sides visit this problem, and try our best to listen to all of those. I will support what this Committee brings out. And we will do our best. We understand that it will not be perfect, because we are not perfect. If we were perfect, it would already be written. If we were perfect, we wouldn't need it.

Senator BOREN. We really appreciate, Mr. Chairman—you have obviously gone at this, you have put this down early on the agenda. And I can say, as one of the authors of this bill, that I feel very

good in having this legislation in your hands and in the hands of this Committee, knowing your commitment to try to get something positive done.

The CHAIRMAN. I guarantee you, as it is already obvious this morning, we will have some—as we say in Kentucky, there's going to be some debate.

Senator BYRD. Mr. Chairman, let me close by thanking the Chairman and Members of the Committee. The Chairman is a very responsible Senator, he's dedicated to his work. And I'm confident that this legislation will receive fair and careful and thorough treatment on the part of the Chairman and the Members of the Committee. I hope that the Committee will continue to expedite its work. And I also hope the legislation will be reported to the Senate early enough that its passage would indeed have an impact on next year's elections.

I thank you.

The CHAIRMAN. Thank you, Senators.

The next witness is the Senator from Illinois, Senator Simon. Senator, you've been very patient, but I hope you've had an opportunity to listen to the witnesses' statements and the debate of this Committee, which is what makes us a deliberative body. It gives us an opportunity, before public view, to let them see what we are attempting to do and the arguments or the debate that is brought forth.

So, with that, if you would like to submit a full statement for the record, it will be incorporated as if given, and you may summarize it, if you wish.

TESTIMONY OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Thank you, Mr. Chairman, I'm going to be very brief; I have no formal statement to enter for the record. I have stayed through all of this because I think there is no issue we face that is more fundamental to the process than this issue. And let me just say to Senator Stevens, who's walking in, that I chair the Constitution Subcommittee right now, and we are going to hold hearings on this question.

But I would add that it is not an easy question. I guess it is like every other issue—once you start digging, it starts to get complicated.

I think we have to do something about the present system of financing campaigns. I spent in my last campaign \$5.3 million. My opponent spent substantially more than that. I say with regret that I spent \$5.3 million. I think that's far more than we ought to be spending.

And The New York Times—I think it was a week ago Monday—had a list of the candidates up in 1990 and what we have accumulated for the 1990 race. My staff pointed out to me very quickly that we've got a total of \$15,000 saved for 1990, and they say if you want to win in 1990 you have to start raising money right now. They have proposed to me a series, a calendar, for this year of sixty-eight fundraisers I will have for the 1990 race. Now, those are

breakfast meetings in Washington, meetings in New York City, and so forth.

Frankly, it means an excessive amount of time that I take away from responsibilities I have in the Senate. It's not a healthy thing.

If you look at the tax bill that passed—not with my vote, but it passed here last year—if we think that tax bill didn't reflect to a great extent campaign contributions made, we are living in a dream world. Anyone who believes that bill didn't reflect campaign contributions, I'll sell you a bridge in Brooklyn, New York. It's all over the place.

Yesterday, one of the major papers had a front-page story covering three columns saying the Japanese are worried about unemployment because it has reached 3 percent. The reality is we are not paying attention to unemployed people because, you know, there aren't any PAC's for unemployed people. We ought to be paying attention to the people with real needs in our society, not to the whims and wishes of the rich and the powerful.

But we are doing the latter rather than the former.

I don't know of anyone who doesn't believe our present system of presidential campaigns isn't a much better one, now that we give both candidates the same amount to spend after the convention. And that's basically what the Byrd-Boren bill does; that's basically what the bill that Senator Moynihan and I have proposed does. There are some pre-primary problems that I think this Committee ought to address. But I think we have to recognize that we have a fundamental problem. Senator Byrd used the word that we are "trapped." I think we are. And the perception out there is that public policy is on the auction block.

While there are some inaccuracies to that perception, it is closer to reality than you and I like. And we can change it. And we ought to change it.

I think we have to protect this institution of the Senate. I think we have to protect the democratic processes better than we are now protecting them. And I think this is a way of moving in that direction.

I'd be happy to answer any questions.

The CHAIRMAN. Thank you, Senator Simon. Under your legislation, does it curtail expenditures?

Senator SIMON. Yes. In our legislation, which is very similar—

The CHAIRMAN. This is the one that you and Senator Moynihan offered together?

Senator SIMON. That is correct.

The CHAIRMAN. Does he have an independent one beyond that?

Senator SIMON. We have the same provision on that. Our bill frankly does not address the PAC problem, but I have no objection to doing that. What it does address is the public financing. It says once you raise that \$250,000 threshold, then you are entitled to public financing. In the state of Illinois it would amount to about \$2½ million. In the state of Alaska you would be eligible for the minimum, \$500,000 for each candidate. Kentucky, I don't remember, or Tennessee.

But clearly \$2½ million is plenty of money for each candidate to spend in a general election in Illinois. I think we have to recognize that we have a major problem.

And as far as the polls that you referred to, Mr. Chairman, I haven't spoken to an audience yet—I don't care whether they are conservative, liberal, Democrats, Republicans—when I explain the present system and what we are proposing, I haven't had a single person come up to me and say I oppose that. I think the public is ready for change. The public recognizes the present system is warping what we are doing on Capitol Hill.

The CHAIRMAN. The unemployment in your state must be a lot better than it is in mine; mine went to 11 percent last month. They are just as happy—as they told me: "Get your money some place else and leave our money here at home." I raised more than 50 percent of my funds in Kentucky from personal contributions. The Boren-Byrd bill would give me twice as much money as I raised this last time. Basically, I would have to raise very little money in the next campaign, if I had to follow this track.

We are going to have a difficult time putting campaign finance reform legislation together. This is a very emotional issue for lots of people because it's the only issue their group has, and therefore they are trying to keep their subscribers on board.

I don't fault that at all. I think that's very good, and we need more participation.

I do have a real concern about negative advertising. Regardless of how much public financing is received, the candidate will be allowed to choose how that money is used. As I recall, your bill does not include anything about negative advertising. I think negative advertising turns people off quicker than the amount of money you have.

One thing, if you reduce the amount a candidate has, you may have less negative advertising. A candidate could choose, in the last six weeks of a race, to take all remaining money and use it for negative advertising. That would be the choice of the candidate. I doubt seriously that we can do anything about that. But there is a procedure through which we can work, I think. If you don't like me, fine, get on the tube and tell the people that, "I don't like Wendell", and I'll get on the tube and say, "I don't like Paul". Then people out there are going to say, "a pox on both of them," but at least our faces are going to be on the tube, not a slick over-voice from Madison Avenue. We had hounddogs in 1984, and I captured them in 1986 in Kentucky.

There are a lot of things that you can do. Once legislation is enacted, ways can be found to get around it. For example, in public financing of the presidential race. Ways have already been found to get around it—independent expenditures, raising of funds after the nomination—that's out there, and that's under public financing.

Paul, I have a lot of questions regarding this legislation, and I'm going to raise them until we have a bill. And I'm sure there will be a lot of questions raised on the Senate floor after the bill comes out of Committee. As I've said publicly, whatever bill comes out of this Committee and my colleagues support, this Chairman is going to fight as hard as he knows how to keep it intact.

So with that statement, I will turn it over to my colleague, Senator Stevens.

Senator SIMON. If I could respond just very briefly. Number one, there's no question there has been some evasion on the presidential race. But I know there's not one of the hundred Members of the Senate who has introduced a bill to change back to the old system on the presidential race.

The CHAIRMAN. That's a crack in the armor, or the door's open a little bit and we ought to be perceptive enough to see that that's a problem; we oughtn't to let it happen——

Senator SIMON. We ought to address the problem.

The CHAIRMAN. We ought to address the problem.

Senator SIMON. But not do away with the system.

The CHAIRMAN. I agree.

Senator SIMON. The second thing I would point out, you mentioned 11 percent unemployment in Kentucky; we have above-average unemployment in Illinois. I think one of the reasons we have above-average unemployment in our states—and we tolerate unemployment in this country that is much above the unemployment rate in many countries—is this system of financing campaigns. We are not addressing the problems that a lot of people in this country have.

I'd be pleased to hear from my distinguished colleague from Alaska.

Senator STEVENS. Well, I'm pleased to have your commitment that you will hold hearings on the proposed Constitutional amendment to place limits on campaign expenditures. After I introduced that, Senator Baker then reintroduced it, and he retired; Senator Hollings is the sponsor of that constitutional amendment now. If we could limit expenditures, I might look differently on some element of a check-off system for public support of campaigns through the process of collecting taxes. However, it's still not a personal contribution; it's earmarked as part of the money that goes to the Treasury, so it's not quite an individual contribution.

But I would look differently on it if we could limit expenditures.

One of the things that none of the bills addresses is the problem of the 501(c)(3) and (c)(4) corporations and their political activities. In one state I know of, telephone calls were made starting about ten days before the election saying, "We want contributions to our association. We've got to organize because it's apparent that one candidate is going to be elected, and he, as a member of the Budget Committee, voted to put a cap on Social Security in the outyears." Now, this group is going to have to have a lot more money to lobby if a person like that is re-elected. All of those monies went into the 501(c)(3) non-profit corporation. That candidate was defeated. He had no way at all to answer them—no way. There's nothing in any of these bills that deals with 501(c)(3) or (4) activities, and they had more impact on the outcome of the election in 1986 than any contributed money, individual or PAC. None of these bills deal with "soft money." I'm informed that at the Democratic National Committee, their employees actually get two checks—one from a "soft-money" account, one from the FEC-money account. And the "soft-money" account is not reported at all, not disclosed. "Soft money" includes corporate contributions in the states where they allow corporate contributions to political parties.

Senator SIMON. It includes Illinois.

Senator STEVENS. It includes union money contributed to political parties where that is allowed by the state, and those state monies come into the national committees, both national committees. None of these bills deals with that.

This to me isn't reform. This is attacking something that some people have put up on a sawhorse. They say the central problem of campaigning is that PAC's are contributing too much money.

Again, I say, if you can get that proposed Constitutional amendment through the Congress, I will go to all fifty states and urge the legislators to make certain that we get a prompt ratification of the amendment to place a limitation on expenditures. A limitation on expenditures to me is the key to true reform in national elections. Without it, there can be no reform.

If you can get that amendment out on the floor and get it moving, I think you will contribute more to reform of the election process than anything else.

Senator SIMON. Two quick comments. Regarding "soft money," you are absolutely correct. Our bill doesn't deal with it and it is a major problem. You come along with a good amendment and I will be a supporter of that amendment.

On the 501(c)(3), that organization I think stands in jeopardy on its tax status if someone complains—and I assume someone will complain. And if the law needs to be tightened, let's tighten the law. Again, we are not suggesting that we have any perfect answer here but let's improve it. I think we have to recognize that we have a major problem in our country that has to be addressed. I hope this Committee will address it, and I applaud you, Mr. Chairman, for holding the hearings on it.

The CHAIRMAN. I might just make one comment, that the amount received from the check-off is declining, I think maybe 4 or 5 percent. And, of course, the cost is escalating.

Senator SIMON. But we still have about a \$91-million balance, or something like that.

The CHAIRMAN. Yes, that may take care of one election, you know.

Senator Gore?

Senator GORE. No questions, Mr. Chairman, just compliments to my colleague. I worked with him cosponsoring his legislation last year. He's been a real leader in this area, and I look forward to working with him this time.

Senator SIMON. I thank you. And I thank you, Mr. Chairman.

The CHAIRMAN. We might just say that this hearing has produced something. We've got a commitment from the distinguished Senator from Illinois to hold hearings and expedite this constitutional amendment. And that's good news. If this Committee does nothing else, we have fared well today.

TESTIMONY OF HON. ALBERT GORE, JR., A U.S. SENATOR FROM THE STATE OF TENNESSEE

The CHAIRMAN. The next witness will be the distinguished Senator from Tennessee, a Member of the Rules Committee, Senator Gore.

Senator GORE. Thank you very much, Mr. Chairman, and to the distinguished Ranking Member. I'm going to skip a lot of the introductory language in my statement and go right to the heart of what I want to say to you.

This issue must be addressed by the 100th Congress. We all know how much public concern there is. We all know from personal experience that the current system really needs to be changed. There's widespread agreement on that point.

I personally am cosponsoring the Boren-Byrd bill. I think it's a good idea, I hope that it can pass. But I sense, Mr. Chairman, that there is some opposition. I hope we can overcome that opposition, but, like you, I understand that sometimes you have to do less than the ideal. So I have proposed for your consideration a more modest approach that could be incorporated into whatever bill finally comes out of the Committee, or could stand alone if no more than this is possible. This, I think, constitutes a bare-minimum approach to dealing with one of the objectives which you, Mr. Chairman, stated that you wanted to achieve, the objective of limiting the overall expenditures in campaigns.

Now, let me move straight to page 3 on the statement that I've given to you and outline exactly what this measure which I have introduced would accomplish.

It would limit spending in senatorial elections. It's only a first step, and, as I say, modest, but here's how it would work. Number one, it would establish voluntary expenditure limits in Senate elections. These limits would be based on the average costs of Senate elections in the last three cycles. It would use incentives rather than a club to put public pressure on candidates to agree to limit public spending.

Now, here are the guts of it. Whenever an individual becomes a candidate under the law of his or her state, he or she would be required to file with the Federal Election Commission a statement of intent, declaring whether or not that candidate intended to abide by the limits that were established under this law. And the limits are very reasonable limits because they are based upon experience in the last three cycles.

If both candidates agreed to abide by those limits, then each would be required to do so and you would have the limits established. If neither of the candidates agreed to abide by the limit, then nothing would happen; they would both be free to have unlimited expenditures and no regulatory scheme would be put into place.

The CHAIRMAN. I apologize for breaking in, but I would like to ask you a question. You say both candidates. When you file for office there may be five on each side. Are you referring to the nominees, or are you saying that each one who files must make that declaration in the primary?

Senator GORE. Let me clarify that point. It will be easier to clarify it later in the statement, but at this point let me just say I use the word "both" because in many elections there are only two major candidates. This bill, like many other bills, would have a mechanism for weeding out serious candidates from ones that were minor-party candidates. Those who were designated as "serious" would have to have raised 20 percent of the limit by the qualifica-

tion date, or be the nominee of a major party that had demonstrated in the last election or so a certain number of votes. So it would have a mechanism for defining who's a major candidate.

And if there were three or four major candidates, then all of that would apply.

Senator STEVENS. Would your proposal apply to the primary or general?

Senator GORE. Well, for the qualification date for the primary, that would be the time by which they would have to have raised 20 percent of the limit.

Let's deal with it in the context of two major candidates for purposes of simplifying it, but it works exactly the same if you've got three, four, or more. Still dealing with the example of two candidates, if both agree to abide by the limit, then they are both bound by law. If neither agrees to abide by the limit, then nothing happens and we've got the same situation we have now and there's unlimited spending.

Here's where the rub comes in. If one candidate agrees to abide by the limit, and the other candidate does not, then the first candidate is awarded a grant equal to the expenditure limit. Now, this would come from the check-off, and because, as you will see as the explanation continues, it's unlikely there'd be very many grants under this scheme, there would probably be no adjustment necessary to the size of the fund that's established with the current check-off.

But, in any event, the candidate who did not agree to the voluntary spending limit would not be subject to any expenditure limitations, and that candidate would still have unlimited spending if he or she could raise it. The candidate that did agree, who got this grant that was equal to the expenditure limitation, would be limited to 150 percent of the expenditure limitation. Now, in virtually every state—and I will provide for you the amounts in each state—for purposes of reference, the expenditure under this for Alaska would be \$1.67 million, which is in keeping, I suspect, with what campaigns have been running there, and in Kentucky \$2.85 million—and so 150 percent of those totals, you can look at what that would mean in the context of your state.

Senator STEVENS. What about the person that is going to spend his own money?

Senator GORE. If the person is going to spend his own money, that person—if you are talking about the case of a multimillionaire, say, who is going to spend his own money, presumably—

Senator STEVENS. His or her own money.

Senator GORE. His or her—presumably that person would say I will not agree to the voluntary spending limitations. All right, you have a candidate of the other major party, or someone who has demonstrated enough support—

Senator STEVENS. No, I mean does it trigger any different reaction if the person spent his own money rather than the contributions from other individuals?

Senator GORE. No, the only trigger mechanism is whether that person agrees or disagrees to abide by the voluntary spending limitation—that's what governs, whether the mechanism kicks in or not.

The CHAIRMAN. If he agrees, he still has a limit put on him of 150 percent.

Senator GORE. That's correct.

The CHAIRMAN. And the other candidate can go ahead and spend anything he wants to.

Senator GORE. That's correct. And in a case where you have a multimillionaire running against you and you are still limited to that 150 percent, that's still a better situation than it would be without it, because it's unlikely, with these figures, that you are going to reach that 150-percent level anyway. So even in that case it would be a far better situation than we have now.

Now, briefly, the enforcement mechanism is also very simple. This approach would not set up any regulatory mechanism; it would not be expensive; it would be very simple in using the incentives that are already partly in the electoral process. The FEC would be required to notify the Senate Ethics Committee if violations occurred. In this sense, the bill is self-regulating and would not create a burdensome regulatory scheme.

To be successful, it would need the support of the leadership of both political parties.

Now, this type of enforcement mechanism has proven to be a successful model in the House. As you may know, the House has effectively stopped completely the use of tape recordings of House floor proceedings in congressional campaigns by promising swift and certain action if the violator wins the election. To my knowledge, tapes of House floor proceedings have not been used a single time since the initial violation; the threat of sanction has been sufficient.

Now, other parts of my statement talk about the nature of the expenditure limitations. I've referred to that briefly. Let me just say in conclusion that I think that this approach, while not ideal—and while I support, let me emphasize again, the Boren-Byrd approach—if that proves to be more than the Senate can pass this time, I would view this as a barebones minimum of what we could do in a non-invasive, non-regulatory way, to put a limit on campaign spending in most elections.

I'll end with that, and I will ask that a statement be incorporated in the record, Mr. Chairman, which also includes the expenditure limitations under my bill as they would apply to each state.

The CHAIRMAN. Without objection, the total statement will be included in the record as if given.

[The prepared statement of Senator Gore follows:]

STATEMENT OF HON. ALBERT GORE, JR., A U.S. SENATOR FROM THE STATE OF
TENNESSEE

Thank you, Mr. Chairman, for this opportunity to address my fellow committee members on the prospects for campaign finance reform.

I sense considerable interest in this issue, both here in the Senate and among my constituents in Tennessee. A cloud is hanging over our heads. Campaign expenditures have shot out of control, and everyone knows it.

After venturing into the den of campaign finance, today's politician faces the classic moral dilemma—his heart may be pure, but his hands never quite feel clean. Washington is slowly being poisoned by the *perception* of influence peddling. Americans can see what's going on—and they tend to think that money is the root of all evil, or in this case, that evil is the root of most money. The way PAC contributions are flowing, campaign finance is a scandal waiting to happen.

It doesn't have to be that way. Most political candidates, like most people generally, are painstakingly honest. The taint of money usually has very little to do with politics, but almost everything to do with our campaign system.

Campaigns cost too much. If we are to reform the present system, we must first address the question of costs before moving on to the underlying issues of how campaigns are financed. By meeting this problem head on, we may be able to allay public concerns about potential influence peddling.

We need campaign finance reform, not only for the American people but for ourselves. To me, the most insidious aspect of modern campaigns is that candidates must spend so much time and effort raising money, and have so little time left to devote to things that matter—such as addressing the issues on which voters ought to make a choice. Campaign finance reform could be a tool to set us free.

I would like to suggest four basic principles for a reform bill:

It must reduce campaign costs—especially the fastest growing expense, media.

It must remove the cloud of influence peddling.

It must be simple to administer and inexpensive to operate.

It must provide a *comprehensive* solution, not another well-meaning effort that squeezes the problem in one place only to watch it pop up somewhere else.

I support public campaign financing. Last year, I was an early cosponsor of the Mathias-Simon bill, and I have cosponsored the current Boren-Byrd bill. I believe we must move in that direction.

But some of my colleagues believe the time is not yet ripe for public financing. We will get there, but we may have to get there in measured steps. If we cannot pass a public financing bill this session, I would like to suggest an alternative that is simple, certain, and cheap.

My alternative is a modest proposal to limit spending in senatorial elections. It is only a first step, but it offers many advantages. Here's how it would work:

The bill would establish voluntary expenditure limits based on the average costs of Senate elections in the last three cycles. It uses incentives rather than a certain club to put public pressure on candidates to agree to limit campaign spending.

Whenever an individual becomes a candidate under State law, he would be required to file with the FEC a statement of whether or not he intends to abide by these limitations. If two candidates agree to abide by the expenditure limitations, then each would be required to do so.

If neither of the two candidates agrees to abide by the limitations, neither would be required to do so and no new regulatory scheme is set up. But if the first candidate agrees and the second does not, then on the day after the primary, the first candidate would be awarded a grant equal to the expenditure limit. At that point, the second candidate would not be subject to any expenditure limitations. The candidate receiving the grant would be required to limit his or her spending to an amount equal to 150 percent of the grant.

The enforcement mechanism in this bill is also very simple. The FEC would be required to notify the Senate Ethics Committee if violations occurred. In this sense, the bill is self-regulating and would not create a burdensome regulatory scheme. To be successful it would need the support of the leadership of both parties. This type of enforcement mechanism has a successful model in the House. As you may know, the House has effectively stopped the use of tapes of House floor proceedings in congressional campaigns by promising swift and certain action if the violator wins the election. To my knowledge, tapes of floor proceedings have not been used since the initial violation. The threat of sanction has been sufficient.

The expenditure limitations contained in the bill are realistic and provide more than enough money to run robust campaigns. Most candidates would agree to abide by the limits. They would not have to do so. But in refusing, they would confer a substantial grant to their opponent. Only candidates with access to unlimited funds would likely be confident enough to refuse to abide by these limitations. The overall cost to the Treasury should therefore be minimal. While it is impossible to predict the exact cost of this measure, public pressure would surely keep costs to a minimum.

That would seem a small price to pay for the broader goal of limiting overall campaign expenditures. No candidate is required to abide by any limitation, nor does the bill present some of the vexing questions associated with other measures. It would be easy to understand, simple to administer, and inexpensive to implement. It would address a political problem through political means—by appealing to public pressure and basic competitive instincts.

Mr. Chairman, my alternative is just a first step toward limiting the overall cost of campaigns. I offer it in hopes that it could someday lead to the more far-reaching breakthroughs my colleagues have envisioned.

Thank you.

State	Voting age population	Expenditure limitation
Alabama.....	2,893,000	\$2,946,500
Alaska.....	348,000	1,674,000
Arizona.....	2,257,000	2,628,500
Arkansas.....	1,705,000	2,352,500
California.....	19,094,000	10,047,000
Colorado.....	2,347,000	2,673,500
Connecticut.....	2,408,000	2,704,000
Delaware.....	458,000	1,729,000
Florida.....	8,631,000	5,315,500
Georgia.....	4,228,000	3,614,000
Hawaii.....	758,000	1,879,000
Idaho.....	689,000	1,844,500
Illinois.....	8,436,000	5,218,000
Indiana.....	3,998,000	3,499,000
Iowa.....	2,121,000	2,560,500
Kansas.....	1,791,000	2,395,500
Kentucky.....	2,696,000	2,848,000
Louisiana.....	3,124,000	3,062,000
Maine.....	856,000	1,928,000
Maryland.....	3,259,000	3,129,500
Massachusetts.....	4,459,000	3,729,500
Michigan.....	6,591,000	4,295,500
Minnesota.....	3,048,000	3,024,000
Mississippi.....	1,804,000	2,402,000
Missouri.....	3,697,000	3,348,500
Montana.....	588,000	1,794,000
Nebraska.....	1,169,000	2,084,500
Nevada.....	686,000	1,843,000
New Hampshire.....	734,000	1,867,000
New Jersey.....	5,709,000	3,854,500
New Mexico.....	995,000	1,997,500
New York.....	13,362,000	7,181,000
North Carolina.....	4,600,000	3,800,000
North Dakota.....	491,000	1,745,500
Ohio.....	7,857,000	4,928,500
Oklahoma.....	2,401,000	2,700,500
Oregon.....	1,990,000	2,495,000
Pennsylvania.....	8,996,000	5,498,000
Rhode Island.....	738,000	1,869,000
South Carolina.....	2,389,000	2,694,500
South Dakota.....	504,000	1,752,000
Tennessee.....	3,490,000	3,245,000
Texas.....	11,410,000	6,205,000
Utah.....	1,204,000	2,012,000
Vermont.....	392,000	1,696,000
Virginia.....	4,241,000	3,620,500
Washington.....	3,228,000	3,114,000
West Virginia.....	1,432,000	2,216,000
Wisconsin.....	3,479,000	3,239,500
Wyoming.....	354,000	1,677,000●

The CHAIRMAN. I only have one question for the Senator. You gave me a feeling in part of your statement which I read that you think it's going to be very difficult to get a bill passed, and one particularly with public financing. And even though you say you support the other, you have this as the alternative. Am I correct in that assumption?

Senator GORE. I would shade it differently, Mr. Chairman. I honestly believe that we have a real chance of passing legislation as ambitious as the Byrd-Boren bill. My expression of support for it is not boilerplate; I strongly support it. I think it's needed. And I sense a strong degree of support in the Senate for taking action this time.

Nevertheless, I have heard from some of my colleagues privately that they have reservations about it. And I really don't know what the outcome will be.

But I really believe that it has a chance for passage, and I'm going to work very hard as a Member of this Committee to maximize those chances. If it passes, I would argue that this mechanism ought to be incorporated in with it and ought to be made a feature of that bill. If some other legislative vehicle passes addressing broader aspects of the issue, I would argue this ought to be attached to it.

Now, in the unfortunate event that it proves impossible to pass a broader bill—and I really hope that's not the case—then I would say this would be a fallback bare minimum.

The CHAIRMAN. I have no further questions. Senator Stevens?

Senator STEVENS. If we can get a Constitutional amendment agreed to that would authorize the Congress to limit expenditures, would you reduce that average?

Senator GORE. Would I reduce the average? Yes, I would reduce the average. The size of the expenditure limitations contained here is influenced by a desire to make it as acceptable as possible to a majority, to get it passed. I might say that over time these limits would be ratcheted downward a little bit. If you look at the fine print of this legislation, they would increase by inflation minus 2 percent each election cycle. And so you would have a slow ratcheting down of the limits under this legislation.

But like my colleague from Illinois who preceded me at this table, I support the initiative that you have taken with respect to that amendment.

I just think we've got to do something. I favor a broader approach rather than a narrower approach, and this is kind of a stop-gap proposal that ought to be a feature of whatever we do. And, in the unfortunate event that we couldn't do more, could be a minimum.

Senator STEVENS. Thank you very much. Interesting ideas. I will examine your proposal in detail. I would like to see campaign expenditures reduced and I would like to see something developed that would provide that you would get your money from within your home state. I don't see that it's possible until you can limit expenditures.

Senator GORE. Well, I appreciate the hearing. Thank you.

The CHAIRMAN. Thank you very much, Senator.

TESTIMONY OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM
THE STATE OF NEW MEXICO

The CHAIRMAN. The distinguished Senator from New Mexico, Senator Domenici. We welcome you to this hearing, and you can be the finale today.

Senator DOMENICI. Thank you very much, Mr. Chairman.

The CHAIRMAN. We look forward to your testimony. If you want to put a full statement in the record, Senator, you may, and summarize. However you want to do it is up to you.

Senator DOMENICI. Mr. Chairman and Senator Stevens, I have a detailed explanation of this proposal. The bill was introduced a couple of days ago; Senator Stevens is my cosponsor. I was trying to think of a name for this, and I guess the best I can do is call it the "poor man's campaign protection act." I don't know if that's a good acronym or not.

The CHAIRMAN. It probably will read well, and that's what you need.

Senator DOMENICI. I thought I could do better, but I didn't have enough time to think about it, so that's the best I could do.

Mr. Chairman, let me right up front suggest this is no substitute at all for the reform that you are talking about in terms of overall campaign expenditures. But one thing that has been concerning me about our campaigns to date is the proliferation of candidates who spend an awful lot of their own money seeking election. Some succeed, some don't, nonetheless the last decade has seen a rather enormous proliferation of candidates who are capable of spending \$2-3-4-10, I guess 12 million of their own money. I am fully aware that the United States Supreme Court has placed some very difficult restrictions on us with reference to the constitutionality of any inhibitions regarding that which they have called a constitutional right.

So what I have done here, Mr. Chairman, and Members of the Committee, is to try to figure out a disincentive for the wealthy to use their own money with the hope that they really would not use it, but building a very large incentive on the side of the candidate that is not rich and that does not have his or her own money. And it's very simple.

If a candidate intends to spend outright or borrow \$250,000 or more for their campaign, primary or general, there is a requirement in the Domenici-Stevens bill that they so declare, and then that changes the rules of the game for the candidates who are running against that candidate such that it is easier for the candidate without money to raise money to compete with the candidate with a lot of money.

Again, I repeat my hope is that it would be a disincentive, and I pick the number of \$250,000, and I will tell the Committee it is arbitrary. Nonetheless it seemed to me that it made sense.

Let me just explain what it would do, and then I would be pleased to answer any questions.

If a candidate for the United States Senate is going to spend \$250,000 or more of his own money, he has to declare that within fifteen days of becoming an official candidate, or, if he doesn't de-

clare, he can't spend his money. So I assume if he intends to, he will declare.

If he so declares, then using current law, Mr. Chairman—and I again am not talking about trying to inhibit broad reform, this comes to you with the assumption that we've got current law—if that candidate says, okay, I'm going to spend my own money, then the opponent has the following privileges. Instead of \$1,000 from a given constituent per campaign, he can raise \$10,000 from each person; instead of having a \$5,000 PAC limitation, that's doubled and he can raise \$10,000 per PAC. And the individual contribution limit on Americans, which is \$25,000, and you can give no more, is supplemented by an additional \$25,000 so that he can get involved in these kinds of campaigns.

Now, Mr. Chairman and Senator Stevens, I think it serves three purposes. I think a candidate who's going to spend his own money in large quantities will think twice about doing it, number one. Number two, it seems to this Senator that one of the real problems that a poor candidate has in competing with a rich candidate who's going to spend his own money is not only money, but how long it takes to raise the money to compete with the \$10-million man. The estimates are enormous as to how much time a candidate would have to spend under current law trying to raise \$5 million to compete with a candidate who spends \$5 million of his or her own wealth. The evidence is that instead of being out there campaigning with the people, you might have to spend 60 or 70 percent of your time trying to raise money because you are limited to \$1,000 and that person writes a million-dollar check.

So I think it will make the campaign more balanced in that the candidate without his or her own money has more time to campaign because he can raise his money easier.

Last, it has another provision that I have not discussed. I hear it is not new in the sense of proposals that have been put before you by way of reform, but it fits nicely into this. If we are unable to change current law, the Domenici-Stevens package would fit right on top of current law. And it says if you want to spend your own money, then you put it up, don't borrow on your signature, because if you borrow you better have your loan paid back before you are elected, because to the extent that you borrow on your signature you can't go get PAC money after the election to pay your debt off.

I believe that may have constitutional problems. I've had some constitutional experts look at it, and they say it seems to me it's a denial of somebody's rights, and I said, well, that's nice, let's just let the Supreme Court decide that one. It would appear to me to be a very easy exception for the Supreme Court in this case. I'll tell you why. The way the law is right now, you can go into the last sixty, seventy, eighty days of the campaign—you can even be the frontrunner by 5 or 6 percentage points, and you can say why take a chance, this is a neat deal for me, I'm going out and borrow \$500,000 and I'm going to win this campaign hands down. You have no more intention of paying that money back yourself than the man in the moon. Well, what you do is you get elected and you start all your PAC hearings over here, and you have your new constituents—since you're elected it's a lot easier now for a lot of

PAC's that didn't want to help you before, they'll all give you the money to pay that off.

I believe we ought to make that very difficult.

The last part of my bill says it doesn't matter even if you file your intention to use your own money, you have to use all of your own money, all you intend has to be in that campaign within sixty days prior to election day. You give the guy running against you the privilege of raising more money, but you also say if you are going to use your own, you can't that last sixty days put any of it in; you've got to put it all in up front, giving that opponent a chance to see exactly where the cards are stacked so that he can use his enhanced privileges of raising money right squarely on the table.

Now, Mr. Chairman, I repeat this is not in here by way of substituting for Byrd-Boren, which is a whole new concept of financing. I believe, however, that if we do nothing else and can't get anything else through, we ought to seriously consider making this institution, as far as its campaigns, a fairer playing ground for the extremely wealthy versus those who have to go out and raise campaign money. I am not rich, I have nothing against wealth; as a matter of fact, I have nothing at all against wealthy candidates winning and serving in the U.S. Senate—that's the American system. But I don't believe we have to sit by and, just because this Supreme Court has said it's unconstitutional to prohibit them—and I probably think they are going to stay there forever—I don't think we have our hands tied; I think we can make it hard for them to do it, or harder, and we can create some disincentives, and that's what I tried to do.

Thank you very much for listening.

[The prepared statement of Senator Domenici follows:]

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Mr. Chairman, Members of the Committee on Rules.

It is an honor for me to testify before this distinguished Committee on what is obviously a very complex and difficult issue, the question of campaign financing reform.

You have heard many arguments on ways to bring greater fairness into campaigns for the United States Senate. You have heard complaints over the evils that large individual contributions or PAC money or other types of spending inflict on the electoral process. You have heard Members advocate controls over this type of spending or that type of spending.

Reform is clearly in the wind.

Yet every one of these "reforms," whether intended to do so or not, will almost certainly distort the process. They help one type of candidate or one party, while hurting another.

Some reforms favor the incumbent. Others favor candidates with access to union support. Still others make it easier to raise bucks from certain business interests.

This is a complicated issue, where change begets unexpected results. I doubt that many of the reformers of the 1970's foresaw the growth of the political action committees in the 1980's, a development that grew directly from earlier "reforms."

Mr. Chairman, I introduced S. 625 earlier this week. I was pleased to be joined in sponsorship of that bill by the distinguished ranking member of this Committee, Senator Stevens. I invite others on the Committee to join us.

The purpose of S. 625 is fairness, straight and simple.

Whatever this Committee does, it must stress fairness. You must stress balance.

S. 625 will rectify a serious imbalance that exists currently in election law, one that provides a tremendous advantage to a very wealthy candidate, should that candidate spend large sums of his or her own money on his or her own campaign.

The Supreme Court has given the rich a great advantage in the voting booth: A rich candidate can spend to his or her heart's content, while the poorer opponent faces the strict limits we have imposed on the money that opponent can raise.

Unless we are careful, Mr. Chairman, the Congressional Marketplace will become a Gucci Boutique.

Any reform package must address this obvious inequity.

Possibly even more important than the dollar imbalance is the effect of the existing law on a candidate's time. While the wealthy candidate simply writes a fat check to his or her own campaign, the poorer candidate must spend 50, 60, maybe 70 per cent of his or her time and energy scrounging for the contributions needed to compete.

The members of this Committee know that I am not a wealthy man. But I do not, in any way, disparage the right of a person of wealth to run for public office, whether great or small.

I simply believe—and I believe deeply—that in a democracy, we must not allow individuals who control vast wealth to enter the election booth with a big, sometimes unassailable, advantage.

We must stress fairness.

Before explaining the specifics of S. 625, I should discuss how the current law operates. This law was written in 1974, and has, with one major exception, remained static for 13 years.

Congress in 1974 imposed personal limits on campaign financing. Personal contributions, including those by individuals to their own campaigns, were limited to \$1,000 per election: \$1,000 for a primary; \$1,000 for a general election.

An overall limit an individual could contribute annually to all Federal elections—candidates, PACs, and national committees—was set at \$25,000.

And PAC contributions were limited to \$5,000 per candidate per race.

This approach did not provide the perfect solution to the complex problem of campaign financing. But, at least, this approach offered a solution that was balanced, one with reasonable limits for everyone.

That scale of fairness remained in balance until 1976, when the Supreme Court found that a spending limit on the candidate himself was unconstitutional, as it limited the candidate's First Amendment Rights to present his own views to the public.

The result: Candidates of wealth could now heap family treasure into an effort to attain public office, while opponents continued to confront those rather tight 1974 financing restrictions.

Since 1976, a lot of family wealth has been pumped into campaigns for the United States Senate. Personal expenditures in the range of \$5 million to \$10 million have occurred on several occasions.

Some of those wealthy candidates won, some lost. But let me underline this point: The wealthy candidate went through the race with an extreme advantage. That candidate simply wrote a check to cover costs, while the opponent was forced to seek financing—and to spend lots of time doing it—from thousands of smaller contributors.

That's not all bad, of course. I'm proud of the fact that 20,000 individuals contributed to my 1984 campaign for re-election, providing 70 per cent of the money I was able to raise.

Nevertheless, the potential that family wealth can be used to purchase a seat in the Senate remains ever present. It is a possibility that runs counter to the philosophy of a democracy. It is a possibility we must struggle to lessen.

I will be frank and say that it is not easy and simple to chart a path to fairness, one that is clearly constitutional.

But despite that difficulty, we must try. S. 625 represents that effort, that search for fairness.

How does my bill work? First, I began with the assumption that the Supreme Court will never permit any restriction on the total number of dollars a candidate can spend on his or her own campaign.

So to obtain fairness, we must loosen the constraints on the non-wealthy opponent.

Under my proposal, supported by Senator Stevens, the current dollar PAC and individual spending limits will remain effective and unchanged, so long as all candidates in a race hold to certain limits in their personal spending.

But should a wealthy candidate unleash the family wallet, my bill would loosen the current financing limits on the opponent.

These limits would not be loosened for the wealthy candidate, only the opposition.

Specifically, S. 625 requires that, within 15 days after a Senatorial candidate qualifies for the ballot, the candidate must file a statement with the Federal Election Commission.

In that statement, the candidate must declare whether he or she intends to spend a total of \$250,000 or more in personal and family funds during the campaign. This total includes loans to the campaign.

A candidate who fails to file this declaration is assumed to plan to exceed the \$250,000 limit.

I want to reiterate this point: If all candidates hold to their low-spending promises, then current contribution limits are maintained; this bill will have no effect whatsoever on those limits.

But if a candidate decides to exceed the \$250,000 limit, the opponents in that race—whether it is a primary or the general election—will be permitted special, higher limits on contributions.

The individual contribution limit for the low-spending opponent in that campaign only would be raised to \$10,000 from the current \$1,000.

The current limit of \$5,000 for a single PAC would also be increased to \$10,000.

The over-all, per-person cap of \$25,000 would be increased to \$37,500, with the increase available only—repeat, only—for donations to candidates running against those declared big-spenders.

Should a candidate change his or her mind and breach the \$250,000 barrier once the campaign is under way, the candidate must notify Federal authorities and the opposition within 24 hours by certified mail. At that point, the limits would rise for the opposition.

Should the wealthy candidate lose in the primary, the contribution limitations would drop back to current limitations for the general election.

I am certain that some critics will argue that my approach will aggravate campaign spending.

To the degree that it permits the middle-class candidate to keep up with the silver-spoon opponent, that is a possibility. But I want my colleagues to think of the alternative, a world where the only answer to one wealthy candidate becomes another wealthy candidate. Do we really want that?

I would hope that my approach, putting family wealth on the block right from the start, would discourage any such flood of family dollars.

Disclosing intent will not stop such spending, but it could make that spending politically unacceptable.

The approach in S. 625 has grown from two thoughts: The need to minimize the dollar advantage of enormous wealth, together with the concurrent need to maximize the opponent's time pursuing a campaign on the issues, rather than caught in the quicksand of fundraising.

I should also point out to the Committee that the \$250,000 ceiling is arbitrary. I selected it as a level that, while representing a small percentage of the cost of most Senate campaigns these days, stands well above the personal means of many candidates for the Senate.

My bill also deals with the problem of a last-minute deluge of money. S. 625 prohibits any—I repeat, any—personal contributions or loans by any Senate candidate or the candidate's family during the final 60 days before any election, regardless of whether the candidate has reached the \$250,000 limit.

Thus, all candidates can be assured they will not confront a last minute deluge of family money, money the poorer opponent could never offset with last-minute contributions, even with the higher limits.

Further, S. 625 makes it illegal for any candidate to recoup personal contributions, or repay personal loans, using campaign contributions raised after the election has passed. This would prohibit the wealthy candidate lending vast sums to the campaign, then refilling the family coffers from unrestricted PAC receipts after the election.

Mr. Chairman, I will be the first to admit that this entire approach could have imperfections. But it represents what I view as an essential start toward the elimination of one of the most serious distortions in the Federal election financing process.

Is the bill aimed at my wealthy colleagues in the Senate? No, I don't think so. That certainly is not the intent.

I would guess that most of the very wealthy members of the Senate would not object to this legislation, I believe they recognize the imbalance that exists.

Mr. Chairman, I urge that this distinguished Committee consider and adopt my approach when you mark up any campaign reform bill.

I stand ready to work with you in seeking the goal that I know is held by each of us: The development of a law that is truly fair and balanced. That is what the American people expect from us.

Thank you.

The CHAIRMAN. Any questions before you go?

Senator STEVENS. I do not have any questions. I'm cosponsor of the Senator's proposal.

The CHAIRMAN. Just a few quick questions, Senator Domenici. When you raise the limit of individual contributions from \$1,000 to \$10,000, does that apply to the primary and the general election, or will it just be the general election? Otherwise it would be \$20,000, instead of \$2,000.

Senator DOMENICI. Mr. Chairman, I thought about that, and I can tell you right off that if this Committee seriously considers this and goes through it and gets a lot of advice from outsiders—like any of these campaign bills it has some problems, and the sponsors had to make some decisions. I made the decision on this one that each campaign stands on its own, primary and general. However, it is entirely possible that somebody will put money in a primary campaign of their own and will not win the primary, in which event this bill says at that moment in time for the general election there is no enhanced solicitation privilege vested on those who remain.

But the answer to your question is, it is for each, primary and general.

The CHAIRMAN. That's what I thought, but I wanted to be sure that my interpretation was correct. I was surprised when you came forward with the concept that a candidate cannot raise the money to reimburse the family kitty. We have a law in Kentucky that if you put in your own money and are successful, you cannot raise any money to pay off that debt while holding office. I'm not sure you can go beyond that, but it is already in place.

Senator DOMENICI. Has that been challenged in court, Mr. Chairman?

The CHAIRMAN. I don't believe it has. I would say that if it ever is to be challenged, it probably will be challenged this year—I'm not sure. But nevertheless, it's there and it's been operating. It might be of interest to all of us to look at that idea. I think you have a very interesting concept.

Senator DOMENICI. I would now say to my good friend, the Chairman, without even further discussion, I would accept an amendment to my proposal and say that, if you want to wait till you are out of office and collect it from PAC's, good luck. That would be all right. [Laughter.]

The CHAIRMAN. I understand that. It's very difficult for them to recognize you after you are out of office, even if you were not defeated and you just left voluntarily.

Senator DOMENICI. I agree.

The CHAIRMAN. It's been mighty nice to have you, and I appreciate your coming and helping us today.

Senator DOMENICI. Thank you very much, Mr. Chairman.

The Chairman. And I promise you, we will give a very serious look at your proposal.

Senator DOMENICI. Thank you very much.

The Chairman. This Committee is adjourned until March 18 when we will have additional Senators who will testify concerning the bills they have introduced.

[The Committee adjourned at 12:25 p.m.]



SENATE CAMPAIGN FINANCE PROPOSALS OF 1987

WEDNESDAY, MARCH 18, 1987

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in Room 301 of the Russell Senate Office Building, Hon. Wendell H. Ford, Chairman, presiding.

Present: Senators Ford, Pell, DeConcini, Adams, Dodd, and Stevens.

Staff present: James O. King, staff director; William McW. Cochran, senior adviser; Gerald W. Siegel, chief counsel; Gail S. Martin, chief clerk; Wayne A. Schley, minority staff director; William B. Canfield, III, minority chief counsel; Carole J. Blessington, assistant chief clerk; Gerald Gereau, chief investigator; John L. Sousa, elections counsel; Constance H. Friedman, staff assistant; Byron F. Hoover, staff assistant; John R. Moremen, staff assistant.

The CHAIRMAN. Good morning, Ladies and Gentlemen. This is a continuation of the hearing that we started a couple of weeks ago relating to federal election campaign bills. I have no opening statement. Senator Pell, do you have a statement this morning you would like to make?

Senator PELL. I do sir, and thank you very much indeed for affording me this time to make a few comments. As a cosponsor of S. 2, I share the concern we all have about the high cost of campaigning. I must say that while I support the general thrust of S. 2 and am a cosponsor of it, I do have reservations about some of its parts.

I think we should not place too much emphasis on curbing the influence of PACs, and here I am struck by the principal fact that when an individual reaches into his pocket and pulls out \$100, you feel more under commitment to him, obligation to him, access to him, than you do for \$1,000 out of a PAC where somebody—a PAC officer or some representative here—simply has to divide the money up anyway. But, in general, I think the thrust of S. 2 is excellent and I support it.

The main point I want to make, very briefly, is that there are other ways to attack the problem of escalating campaign costs. Legislating limits on contributions and overall expenditures in conjunction with public financing are laudable proposals. But why not go a step further and find the nub of the problem and cope with the problem at its core.

And I refer to the largest single component of contemporary campaign costs, the high cost of TV time buys. TV is the mainstay of all major campaigns and really accounts for almost half of most campaign budgets, yet it is sold on the public airways by holders of public franchises, thus bidding up the cost of running for public office.

This strikes me as paradoxical and a costly misuse of a public resource. For this reason I have introduced as an amendment to S. 2, the Informed Electorate Act. My amendment would require all licensed TV stations to provide free time for the presentation of views by candidates for the Senate and the House. It expressly provides that the time be used to promote rational discussion and debate of the issues in time blocks not of 30 seconds, but up to 15 minutes.

Hopefully, it would thus be an antidote to slick advertising TV gimmickry which all too often results in negative, distorted campaigning, as we certainly saw in the past election. The time grants provided by my amendment would occur only during the 60 days preceding the general election, limited to three hours per station for any one applicant. The time would be granted to the political parties, which would in turn allocate it to candidates, thus providing a mechanism for equitable exposure in large urban areas where there are many federal candidates vying for media time.

My amendment, number 36, is pending before our committee for consideration when it comes time to mark up S. 2 and the other campaign reform legislation before us. I might just note that it has also been introduced as an identical free-standing bill, S. 593, which is pending before the Commerce Committee.

I have no illusions that my amendment would solve the whole problem, but it could prove a step in the right direction. I believe it could be a significant part of the overall solution to the problem of campaign costs and hope it can somehow be included in whatever comprehensive legislation comes to the fore in this session of Congress. In this regard it would seem to me a small contribution for the TV industry to make in return for the monopoly they have of the airways at this time on a particular wave length.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Pell.

[The prepared statements of Senator Pell and Senator DeConcini follow:]

STATEMENT OF HON. CLAIBORNE PELL, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Thank you, Mr. Charman, for affording me an opportunity to make just a few comments at the outset I commend you for moving forward so promptly on this important legislation so that we can report a bill in a timely fashion. I know that several Senators are waiting to testify, and I will only take a moment to record some concerns that I was not able to present at the first hearing because of the press of other business.

As a cosponsor of S. 2, I share the concern we all have about the high cost of campaigning. But I will be frank to say that while I support the general thrust of S. 2, I have reservations about some of its parts. In particular, I think we should not place too much emphasis on curbing the influence of political action committees. We created them as visible and fully disclosed vehicles for certain kinds of campaign support and the best way to keep them in bounds, to my mind, is to call attention to

their excesses and in effect make them an issue for candidates who rely on them too heavily.

But the main point I want to make, very briefly, is that there are other ways to attack the problem of escalating campaign costs. Legislating limits on contributions and overall expenditures, in conjunction with public financing, are laudable proposals that deserve serious attention. But why not go a step further and cope with the problem at its core?

I refer to the largest single component of contemporary campaign costs, and that is the high cost of television time buys. Television is the mainstay of all major campaigns and it counts for at least 50 percent of most campaign budgets. Yet it is sold on the public airwaves by holders of public franchises—thus bidding up the cost of running for public office. This strikes me as a paradoxical and costly misuse of a public resource.

For this reason, I have introduced, as an amendment to S. 2, the Informed Electorate Act. My amendment would require all licensed television stations to provide free time for the presentation of views by candidates for the U.S. Senate and the House of Representatives. It expressly provides that the time be used to promote rational discussion and debate of the issues in time blocks of up to 15 minutes. Hopefully, it could thus be an antidote to slick advertising and TV gimmickry which all too often result in negative and distorted campaigning, as we saw in the 1986 elections.

The time grants provided by my amendment would occur only during the 60 days preceding a general election and would be limited to three hours per station for any one applicant. The time would be granted to the political parties, which would in turn allocate it to candidates, thus providing a mechanism for equitable exposure in large urban areas where there are many Federal candidates vying for media time.

My amendment number 36 is pending before this Committee for consideration when it comes time to mark up S. 2 and the other campaign reform legislation before us. I might just note that I have also introduced an identical free standing bill, S. 593, which is pending before the Commerce Committee.

I have no illusions that my amendment will solve the whole problem, but I do think it could prove to be a worthwhile step in the right direction. I believe it could be a significant part of the overall solution to the problem of campaign costs and I hope that it can somehow be included in whatever comprehensive legislation comes to the floor in this session of Congress. I look forward to advancing that idea as we work on the legislation before this committee.

STATEMENT OF HON. DENNIS DECONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

I would like to thank the Chairman for continuing this series of hearings on campaign reform. As I noted during the last hearing, I believe that this is one of the most important issues that this Congress will address; and I believe the time for action is now. I am optimistic, Mr. Chairman, that we can come up with a reasonable proposal which will restore the faith of the American people in the election process.

It is heartening that so many of our colleagues have taken the time to come before this Committee to testify. In my ten years in this body, I do not recall this level of interest of Senators in testifying.

I have no illusions but that the road ahead is long and may be rocky. I believe that S. 2, the Boren-Byrd bill, presents us with an outstanding framework for the discussions and negotiations ahead of us. I would go so far as to say that minor alterations to S. 2 would make it a perfect bill. (One of those alterations that I believe we will make is to apply spending limits, but not public financing, to primaries.) Senator Boren and the Majority Leader (and their staffs) deserve our thanks for the hard and good work they have done on this bill.

Again, thank you Mr. Chairman for your efforts. I look forward to this Committee's continuing work on this bill.

The CHAIRMAN. We are going to try to accommodate my colleagues this morning. Some have markups and we will try to shuffle the witness list as best we can, and the carryover from the last hearing, which was March 5th.

The first witness, then, will be Senator George Mitchell of Maine. George.

TESTIMONY OF HON. GEORGE J. MITCHELL, A U.S. SENATOR
FROM THE STATE OF MAINE

Senator MITCHELL. Mr. Chairman, thank you very much for holding this hearing and for permitting me to testify.

Mr. Chairman and Senator Pell, it is no coincidence that last year's voter turnout was one of the lowest in our nation's history, even for an off-year election. Something must be done to reform the manner of raising funds and to control the costs of running for elective office because we are losing the confidence of the American people.

The Supreme Court, in the case of *Buckley v. Valeo*, has interpreted the constitution to restrict our ability to impose spending limits on campaigns for federal office. I believe the Court's decision to be one of the most loosely reasoned, poorly written, internally inconsistent legal opinions I have ever read. But it is, unfortunately, the law of the land. Accordingly, the only way to impose spending limits under that decision is a system of voluntary spending limits keyed to a public financing mechanism.

I have reintroduced legislation in this Congress which would provide for a system of partial public financing of Senate general election campaigns. It conditions that public financing on the acceptance of mandatory spending limits based on the size of a state's electorate. My bill includes a spending limit of \$600,000 plus the voting age population of the state times 35 cents.

The incentive for candidates to voluntarily accept such a limit would be the offer of matching federal funds. Because general election limits can easily be circumvented during primary campaigns, I have also included primary campaign expenditure limits. Again, agreement would be voluntary but no matching public funds would be provided in the primaries.

My legislation is designed to create an incentive to seek individual contributions and the public support they reflect. It does so by limiting the federal match to the first \$200 of individual contributions. The bill would restrict total PAC contributions to 20 percent of each state's spending limit. It would attempt to offset the influence of so-called independent spending by providing matching funds so groups seeking to bypass the spending limits on behalf of one candidate would in effect trigger additional resources to the opposition.

Other provisions of my bill deal with the problems of bundling contributions through PACs to avoid PAC limits, campaigns in which only one candidate voluntarily agrees to limit spending, and the cost of television commercials.

My bill is, of course, not the only public financing bill now pending. Several have been introduced which I believe merit close attention, including that introduced by Senators Boren and Byrd which now has 35 cosponsors. I offer my bill as one approach to the problem. Although I believe it offers the best approach, I am, of course, willing to consider other ideas and recognize that indeed no one of these bills provides a perfect solution.

If the post-Watergate elections have taught us anything, it is that we should not underestimate the ability and the ingenuity of lawyers, accountants, and campaign consultants—not to mention

candidates—to find ways to circumvent the law. Therefore, campaign finance reform legislation will require careful consideration by this committee to write a bill that anticipates attempts to circumvent that law.

Although there is some disagreement on specifics, there are, in my judgment, certain essential criteria that must be part of any campaign finance bill. First, there must be limits on spending, both for general election campaigns and for primaries. Most of the bills pending have not suggested controls on primaries because the problems multiply with the increase in candidates. However, we must realize that no public finance bill can effectively meet our objectives without also imposing limits on primary spending.

Particularly for those states with September primaries—and there are several of them—the spending limits can be too easily evaded by heavy primary spending. Second, because the limits on spending must be on a voluntary basis, public financing must be provided. The costs and the potential problems can be controlled if public financing is limited to the general election campaign. Candidates would agree to primary limits on the inducement of public funds for the general election.

Third, the legislation should include aggregate limits on contributions from political action committees. Fourth, there should be restrictions on the ability to evade those contribution limits through the bundling of funds through intermediaries and conduits. Fifth, public financing must be provided to offset independent expenditures made on behalf of an opposing candidate or against a candidate. Finally, the legislation must be written to anticipate the flow of money from candidate committees to less restrictive uses, including so-called sock-money expenditures.

Public financing of Senate campaigns will not guarantee substantive debate. No legislation can guarantee that. It will not prevent wealthy individuals from ignoring public financing and launching campaigns financed from their personal wealth. But as long as the Supreme Court equates money with free speech, no legislation can overcome that prospect. Instead, this reform seeks to address one of the real factors inherent in election campaigns—the tendency to spend without limit. And it seeks to begin the process of returning some control over the cost of seeking public office.

Except for election years, calls for campaign reform do not seem to galvanize public opinion. But there are times when it is our duty to act even in the absence of public demand. Election campaign is such an instance, because it is by its nature an issue that does not evoke public outcry until there is a scandal. Instead, the current campaign finance system has the much more subtle effect on the public of breeding a growing cynicism in our system of government.

While it may not be reflected in strong support for public financing today, we cannot afford further decline of public confidence in our election system. As Members of Congress who participate in this process, we are all well acquainted with the current system. I do not know of one Member of Congress who is happy with the system. It is, of course, awkward to try to change the system while we must operate within it. To do so opens us up to charges of inconsistency and hypocrisy. Yet we must be prepared to move for-

ward, even in the face of such criticism, because the only alternative is to do nothing. And that, in my judgment, is unacceptable.

Many members of Congress have suggested changes they would like to see, but a consensus has not developed. This is in part because we perceive the issue through the prism of our personal interest and what we believe to be the interest of the political party of which we are members. Because the stakes are so high there is reluctance to change. But this issue demands more. We must put aside our self interest and act for the common good. We have an opportunity in this Congress to restore public confidence in the election process. We must not again let that opportunity pass.

I ask that the full text of my statement be placed in the record and I will read only a portion of it.

The CHAIRMAN. Without objection, your statement will be carried in the record as if given.

[The prepared statement of Senator Mitchell follows:]

STATEMENT OF HON. GEORGE J. MITCHELL, A U.S. SENATOR FROM THE STATE OF
MAINE

I want to thank the Chairman, Senator Ford, for holding this hearing and beginning the process toward passing legislation to reform our campaign finance laws.

Although recent Congresses have been unable to agree on changes in federal elections law, I am convinced that this year is different. The campaign finance system has deteriorated so badly that a consensus is emerging that fundamental changes are in order.

I understand that more than twenty Senators have asked to testify at these hearings on campaign finance reform. While we are far from agreeing on the specific changes that are necessary, the number of Senators who wish to speak on this issue illustrates the extent of our concerns.

The authority of our government derives its form and specific powers from the written Constitution. But the substance of its authority derives ultimately from the trust of the people.

If the American people do not have faith that their government fairly represents them, functions in the best overall interests of the nation, and respects the guarantees of liberty and justice on which our system rests, the authority of government is undermined.

There is no more certain way for government to lose the public confidence—and with it the substance of its authority—than for government to appear to be beholden to narrow, special and favored interests, separate from the common good.

Nowhere in government do we risk eroding public faith and undermining public confidence more than through the manner in which we finance our election campaigns.

With each successive election cycle, the public and Members of Congress alike see a degeneration of the process. The system is out of control. The modern campaign for the Senate has in some cases become virtually a nonstop fundraising effort.

That spectacle erodes public faith, both in election campaigns as contests based on issues, and ultimately in the legislative product as well.

And the reality means that Senators must each year devote more and more time to financing campaigns, for ourselves and our colleagues. The process is disliked by all participants: Members of Congress on whose time fund raising imposes enormous demands; voters who wonder whether their small contribution or volunteer effort or vote means anything at all; and even lobbyists themselves, who are forced to bid against each other in an ever-rising cycle of contributions.

The 1986 Congressional election campaign was the most expensive in history. Almost \$400 million was spent on the 469 elections for Congressional office. Final figures are not yet available, but preliminary tallies indicate that campaign spending rose about 20 percent in two years.

For Senate campaigns, spending increased by 27 percent. The final tabulation is likely to show an absolute doubling of spending in just the six years from 1980 to 1986.

And what did that money buy? Many races degenerated into nonstop fundraising efforts to finance television commercials rebutting rival commercials. Where in such

a spectacle is there time for candidates to meet ordinary voters, to set out ideas and proposals, to debate opposing views?

It is no coincidence that last year's voter turnout was one of the lowest in our history, even for an off-year election.

Something must be done to reform the manner of raising funds and to control the costs of running for elective office.

The Supreme Court, in the case of *Buckley v. Valeo*, has interpreted the Constitution to restrict our ability to impose spending limits on campaigns for federal office.

I believe the Court's decision to be one of the most loosely reasoned, poorly written, internally inconsistent legal opinions I have ever read. But it is, unfortunately, the law of the land. Accordingly, the only way to impose spending limits, under that decision, is a system of voluntary spending limits keyed to a public financing mechanism.

I have reintroduced legislation in this Congress which would provide for a system of partial public financing of Senate general election campaigns.

It conditions that public financing on the acceptance of mandatory spending limits based upon the size of a state's electorate.

My bill includes a spending limit of \$600,000 plus the voting age population of the state times 35 cents. The incentive for candidates to voluntarily accept such a limit would be the offer of matching federal funds.

Because general election limits can easily be circumvented during primary campaigns, I have also included primary campaign expenditure limits. Again, agreement would be voluntary but no matching public funds would be provided.

My legislation is designed to create an incentive to seek individual contributions and the public support they reflect. It does so by limiting the federal match to the first \$200 of individual contributions.

The bill would restrict total PAC contributions to 20 percent of each state's spending limit. It would attempt to offset the influence of so-called "independent" spending by providing matching funds, so groups seeking to bypass the spending limits on behalf of one candidate would, in effect, trigger additional resources to the opposition.

Other provisions of my bill deal with the problems of bundling contributions through PACs to avoid the PAC limits, campaigns in which only one candidate voluntarily agrees to limit spending, and the cost of television commercials.

My legislation is of course not the only public financing bill in Congress. Several bills have been introduced which I believe merit attention, including the bill introduced by Senators Boren and Byrd, which now has 35 cosponsors.

I offer this bill as one approach to the problem. Although I believe it offers the best approach, I am of course willing to consider other ideas. Indeed, no one of these bills provides a perfect solution. If the post-Watergate elections have taught us anything, it is that we should not underestimate the ability of lawyers, accountants, campaign consultants, and indeed candidates to find ways to circumvent the law. Therefore, campaign finance reform legislation will require careful consideration by this committee to write a bill that anticipates attempts to circumvent it.

Although we may disagree now on the specifics, there are essential criteria that must be part of any campaign finance reform bill.

First, there must be limits on spending—both for general election campaigns and for primaries. Most public finance bills have not suggested controls on primary spending because the problems multiply with the increase in candidates. However, we must realize that no public financing bill can effectively meet our objectives without also imposing limits on primary spending. Particularly for those states with September primaries, the spending limits can be too easily evaded by heavy primary spending.

Second, because the limits on spending must be on a voluntary basis, public financing must be provided. The cost and the potential problems can be controlled if public financing is limited to the general election campaign. Candidates would agree to primary limits on the inducement of public funds for the general election.

Third, this legislation should include aggregate limits on contributions from Political Action Committees.

Fourth, there should be restrictions on the ability to evade the contribution limits through the bundling of funds through intermediaries and conduits.

Fifth, public financing must be provided to offset independent expenditures made on behalf of an opposing candidate or against a candidate.

Finally, the legislation must be written to anticipate the flow of money from candidate committees to less restricted uses, including soft money expenditures.

Public financing of Senate campaigns will not guarantee substantive debate. No legislation can guarantee that. It will not prevent wealthy individuals from ignoring

public financing and launching campaigns financed from their personal wealth. But so long as the Supreme Court equates money with free speech no legislation can overcome that prospect.

Instead, this reform seeks to address one of the real factors inherent in election campaigns—the tendency to spend without limit. And it seeks to begin the process of returning some control over the costs of seeking public office.

Except for election years, calls for campaign reform do not galvanize public attention.

But there are times when it is our duty to act even in the absence of public demand. Election campaign reform is such an instance, because it is, by its nature, an issue that does not evoke public demand until there is a scandal. Instead, the current campaign finance system has the much more subtle effect on the public of breeding a growing cynicism in our system of government. While it may not be reflected in strong support for public financing today, we cannot afford further decline of public confidence in our election system.

As Members of Congress who participate in the campaign funding process, we are all well acquainted with the current system. I don't know of one Member of Congress who is pleased with that system.

It is awkward to try to change the system while we must operate within it. To do so opens us up to charges of inconsistency and hypocrisy. Yet we must be prepared to move forward, even in the face of such criticism, because the only realistic alternative is to do nothing. And that is unacceptable.

Many Members of Congress have suggested changes they would like to see, but a consensus has been impossible to achieve. This is in part because we perceive the issue through the prism of our personal interest or what we believe to be the interest of the political party of which we are members. Because the stakes are so great, there is a reluctance to change.

But this issue demands more. We must put aside our self interest and act for the common good. We have an opportunity in this 100th Congress to restore public confidence in the election process. We must not again let that opportunity pass.

Senator MITCHELL. Thank you, Mr. Chairman and Senator Pell.

The CHAIRMAN. Thank you, Senator Mitchell. I have no questions to ask. Senator Pell, do you have any?

Senator PELL. No questions.

The CHAIRMAN. We thank you, Senator Mitchell, for your testimony and your interest. We look forward to working with you.

Senator MITCHELL. Thank you, Mr. Chairman.

The CHAIRMAN. I am going to announce the next four witnesses. I understand several of them have markups they would like to go to. The next witness will be Senator Kennedy, and he will be followed by Senator Cranston, Senator Packwood, and Senator Chiles. Senator Kennedy, please proceed.

TESTIMONY OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman.

Mr. Chairman, I have said it before and I will say it again, that campaign financing is a bigger scandal than Irangate. Congress is awash in a sea of special interest contributions, and it is time to drain the swamp. I support S. 2, the bill introduced by Senator Boren and Senator Byrd which now has 36 cosponsors. S. 2 is a strong, comprehensive measure that directly addresses the problems we face. A number of other Senators have offered comparable and serious proposals for reform. Elections in the United States cost far too much money. Far too much of that money comes from special interests, and unless and until we address these problems our democracy itself is at risk.

The 100th Congress sitting during the 200th anniversary of democracy's greatest document can act, must act, and act decisively.

Obviously, the details of reform are not etched in stone in S. 2 and I look forward to working with the committee to achieve a bipartisan consensus worthy of the challenge we face. Briefly, this morning I would like to share with you my thoughts on the principles that should guide us.

First, the arms race in campaign spending must be halted. We need firm and realistic spending limits for federal candidates and we must close the loopholes that allow surrogate spending to make a mockery of the current law.

Second, those limits must apply to primaries as well as general elections. Third, we must dam the rivers of special interest money that are flooding our candidates and our parties. That means tough restrictions on political action committees, including steps to ensure that, once limited, PAC money does not pop up somewhere else under some other name. Soft money, bundling, and independent expenditures must also be cut back.

Fourth, the only realistic way to achieve these goals is to adopt public financing of federal elections. That is how we took the Presidential elections off the auction block in the 1970s and it is time to do the same for Congress in the 1980s.

The Supreme Court has made clear that public financing is the only constitutional method to limit campaign spending. Without public financing limits on PAC contributions are impractical. To me, public financing of elections is the wisest investment any taxpayer can make in the future of our country. Without public financing we will continue down the road that is turning Congress into a fiefdom of PACs. Mark Twain's complaint is truer more than ever today, we have the best Congress money can buy. But at a single stroke, through public financing of elections, the American people can buy Congress back from the special interests.

Fifth, the net impact of our proposals must be to encourage, not discourage, participation by citizens, both as candidates and campaigners. Campaign reform must not become an exercise in incumbent protection. We must not impose entry barriers which are unrealistic or constrain parties from encouraging citizens to be involved.

S. 2 and other proposals offer a range of specific suggestions to reach these goals. It is an auspicious sign that so many members of the Senate in both parties seem ready to go forward. Differences in detail pale in the face of this growing commitment to act.

We must not permit the quest for the best to become the enemy of the good. No legislation can close all loopholes or satisfy each of us on every detail. The size of the challenge must not become an excuse for inaction. The current system is broke and if Congress does not fix it, our democracy will continue to be hijacked by special interests.

Senator PELL [presiding]. Thank you very much indeed, Senator Kennedy. We appreciate your thoughts. That thought that we have the best Congress that money can buy is a little bit of an overstatement, but there are vestiges of accuracy, and I thank you very much.

Senator KENNEDY. Thank you very much. I, too, would like to file my complete statement in the record.

Senator PELL. Without objection, the total statement will be included in the record, Senator.

[The prepared statement of Senator Kennedy follows:]

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

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I support S. 2, the bill introduced by Senator Boren and Senator Byrd which now has 36 sponsors. A number of other Senators have offered comparable proposals for reform. S. 2 is a strong, comprehensive measure that directly addresses the problems we face. Elections in the United States cost far too much money, and far too much of that money comes from special interests. Unless and until we address these problems, our democracy itself is at risk. The 100th Congress—sitting during the 200th anniversary of democracy's greatest document—can act, must act, and act decisively.

Obviously, the details of reform are not etched in stone in S. 2. I look forward to working with the committee to achieve a bipartisan consensus worthy of the challenge we face. Briefly, this morning, I would like to share with you my thoughts on the principles to guide us:

First: The arms race in campaign spending must be halted. We need firm and realistic spending limits for federal candidates, and we must close the loopholes that allow surrogate spending to make a mockery of current law.

Second: Those limits must apply to primaries as well as general elections.

Third: We must dam the rivers of special interest money that are flooding our candidates and our parties. That means tough restrictions on political action committees, including steps to ensure that, once limited, PAC money does not pop up somewhere else under some other name. Soft money, bundling, and independent expenditures must also be cut back.

Fourth: The only realistic way to achieve these goals is to adopt public financing of federal elections. That is how we took Presidential elections off the auction block in the 1970's, and it is time to do the same for Congress in the 1980's.

The Supreme Court has made clear that public financing is the only constitutional method to limit campaign spending. Without public financing, limits on PAC contributions are impractical. To me, public financing of elections is the wisest investment any taxpayer can make in the future of our country. Without public financing, we will continue down the road that is turning Congress into a fiefdom of the PACs. Mark Twain's complaint is truer more than ever today, we have the best Congress money can buy. But at a single stroke, through public financing of elections, the American people can buy Congress back from the special interests.

Fifth: The net impact of our proposals must be to encourage, not discourage, participation by citizens, both as candidates and as campaigners. Campaign reform must not become an exercise in incumbent protection. We must not impose entry barriers which are unrealistic or constrain parties from encouraging citizens to be involved.

S. 2 and other proposals offer a range of specific suggestions to reach these goals. It is an auspicious sign that so many members of the Senate in both parties seem ready to go forward. The differences in detail pale in the face of this growing commitment to act.

We must not permit the quest for the best to become the enemy of the good. No legislation can close all loopholes or satisfy each of us on every detail. The size of the challenge must not become an excuse for inaction. The current system is broke, and if Congress doesn't fix it, our democracy will continue to be hijacked by special interests.

Senator PELL. Senator Packwood.

TESTIMONY OF HON. BOB PACKWOOD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator PACKWOOD. Thank you, Mr. Chairman.

Mr. Chairman, too often in considering legislation we lose sight of what our goals should be. Let me suggest, in my judgment, what

should be the two principal goals in any campaign reform legislation.

One, a significant reduction in the maximum size of contributions from political action committees or, if the Congress were to choose, the total elimination of political action committee contributions altogether. Two, the encouragement of small financial contributions from millions of people directly to political campaigns. By small financial contributions I mean \$50 or less, certainly not more.

Let me address myself first to the limitation of political action committee contributions. I support such limitations. My past votes and amendments have indicated that I have endeavored to achieve such limitations in the past.

As far back as 1973 I advocated limiting PAC contributions. The Federal Election Campaign Act Amendments of 1973, as reported out of the Senate Rules Committee, limited PAC contributions to \$5,000 and individual contributions to \$3,000. I introduced an amendment to that act to limit political action committee contributions to the same \$3,000 as for individuals. That amendment passed the Senate 74-7. However, in the final action on the Federal Election Campaign Act Amendments of 1974, Congress set the PAC limitations at \$5,000 for political action committees and \$1,000 for individuals.

In 1976 the Act retained these limits, providing that individuals could not contribute more than \$1,000 per election per candidate, while PACs could contribute up to \$5,000 per election per candidate.

In an attempt to restore a healthy balance to the influence exerted by individuals and political action committees, I again voted to further limit PAC contributions to \$3,000 during the consideration of the Federal Election Campaign Act Amendments of 1977. That amendment, unfortunately, was tabled 63-33, leaving the \$5,000 limit intact.

More recently, in the 99th Congress, I voted for Senator Boren's amendment to increase the amount that individuals could contribute to Congressional campaigns from \$1,000 to \$1,500, while reducing PACs from \$5,000 to \$3,000. That amendment passed but, of course, Congress took no final action on campaign reform.

Whatever may have been the public perception of campaign financing in the past, there is today widespread feeling that elections are principally financed by groups who have a very narrow interest as opposed to a broad public interest. The public, rightly or wrongly, perceives that elections are being bought and sold and that policy makers are less free to exercise judgments in the national interest because of their reliance on large contributions from special interests in getting elected.

As Senator Moynihan so eloquently put it, referring to the old tax code, during one of those late night sessions when we were working on tax reform, "When that which is perfectly legal becomes morally tainted, then it has got to go."

The fact is that there is an odious perception involving campaign financing and that perception must be addressed. In a democracy, the public must perceive the laws to be fair or confidence is severely undermined. In an attempt to address the public's alarm over

the sources of campaign financing, Congress is on the threshold, I hope, of major reform and is considering many varied approaches, one of which is S. 2, the subject of the hearing today. S. 2 contains a limitation on PACs and that limitation should be enacted, or even a more severe limitation on PACs.

Now let me address myself to what should be our second goal—encourage small financial contributions. My particular reservation with S. 2, the Boren-Byrd Senatorial Election Campaign Act, is not the limitation on PAC contributions. My reservations, rather, center around the partial public financing provisions in the bill, and by that I mean payments directly from the United States Treasury to political candidates.

This type of payment does not give the voters any sense of participation in our democratic electoral process. There is no sense of public participation in taking money out of the public treasury and giving it to us to run for reelection. Every time the government taxes somebody or something there is less a sense of participation.

On the other hand, if we can encourage 10 to 20 million people—and I think we can—to give \$5, or \$10, or \$50 directly to a campaign, that will ensure a sense of participation in politics and in campaigns.

I might say, Mr. Chairman, as an aside, we saw this during the tax reform bill last year when we put a limit on the amount of charitable contributions that could be taken for what we called “appreciated property.” A variety of charities came in to complain about that, but they were almost all eleemosynary organizations that had a large or even preponderant dependence on very large donations of appreciated property.

On the other hand, many other charities that are broad based, that raise their money in \$5 or \$10 from the collection plate on Sunday or raise their money by direct mail, or raise their money in small amounts, supported that limitation. And they have very broad bases of support.

I do not believe most candidates have explored the extent to which they can finance a campaign through small contributions. In every instance where candidates have tried to collect small contributions they have succeeded. In my campaign for reelection in 1986 I had over 161,000 contributions, 95 percent of which were \$50 or less. As a matter of fact, political action committees provided only 14 percent of my total campaign contributions, and had there been a limit in 1986 totally on those contributions, I could have financed a perfectly adequate campaign.

The goal of any campaign reform legislation should be to encourage the direct financial participation in political campaigns by millions of people contributing small amounts directly to campaigns while at the same time limiting larger contributions.

The challenge then is to create a device that will seek to make congressional campaigns more competitive and less dependent on large contributors and financed by a broader segment of the population while at the same time avoiding publicly financed campaigns paid for by Treasury funds. If we are really going to move toward public financing of campaigns, let it be in a form which will give the public a sense of direct involvement and participation in the political process. If we are going to have public financing, then do

not do it with funding paid directly from the United States Treasury to the campaign. Do it in any one of a number of ways that has the government pay but leaves the citizen the broadest choice.

It could be a tax credit, refundable or otherwise. It could be a voucher given to all citizens who in turn give it to a campaign and the campaign presents it to the government or to the bank or to the Post Office for collection. Russell Long even once—and he was not facetious—suggested that to make the system most effective we should have a way to have the contribution refundable as soon as possible, so that you were not asking somebody to give you money in September which they might be able to take off their income tax in April.

He suggested the campaign could issue a receipt to the donor that could be immediately taken to the bank. The donor would get his or her contribution back. I think the idea has merit. It can clearly be worked out in terms of drafting legislation.

If we force candidates to finance their campaign by thousands and thousands of small contributions, then the candidate is going to have to go door to door and he or she is going to have to be involved at the grassroots level. And ironically, the candidates that this will favor the most are not incumbent United States Senators or Representatives who of necessity must spend most of their time in Washington, D.C. Rather it will favor their challengers who can stay in the state all year long, who will have a good base of support, and who will have hundreds of followers who believe in them and will help them raise money through small donations.

The goal, then, should be to emphasize these small donations given directly to deserving candidates—not lump sum amounts given to deserving and undeserving candidates alike.

Mr. Chairman, it is my hope we can reach a consensus and fashion legislation that will link more generous tax credits or other methods of encouraging small contributions to a cap on larger PAC contributions. A tax credit or a voucher mechanism, not unlike food stamps, will achieve the same goals as Treasury public financing but with less government intervention.

Donors will choose the recipients directly. The individual, rather than the government, will determine to whom the funds go. The link between voters and candidates is strengthened by the necessary grassroots approach which requires candidates to raise money in small quantities from many donors, making them aware of the small donors' concerns and hence, more responsive to those small donors.

The link is weakened when you have direct Treasury public financing with money coming from the Treasury to the candidate. Very seriously, Mr. Chairman, there are very few Americans who feel a direct sense of participation in Presidential elections because they made a check-off on their tax returns before they had any idea who their party was going to nominate, and in some cases found money going to candidates they did not support.

I am not suggesting that a tax credit or similar financing mechanism should be enacted alone, but rather it should be part of a comprehensive measure containing other campaign finance restrictions.

I look forward to working with you and other members of this committee in the hopes that we might fashion a consensus that we can all support.

[The prepared statement of Senator Packwood follows:]

STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM THE STATE OF OREGON

Mr. Chairman, too often in considering legislation we lose sight of what our goals should be. Let me suggest, in my judgment, what should be the two principal goals in any campaign reform legislation.

1. A significant reduction in the maximum size of contributions from political action committees.

2. The encouragement of small financial contributions from millions of people directly to political campaigns. By small financial contributions I mean \$50 or less, certainly not more.

Let me address myself first to the limitation of political action committee contributions.

I support such limitations. By past votes and amendments I have sponsored, I have endeavored to achieve such limitations.

As far back as 1973, I advocated limiting PAC contributions. The Federal Election Campaign Act Amendments of 1973, as reported out of the Senate Rules Committee, limited PAC contributions to \$5,000 and individual contributions to \$3,000. I introduced an amendment to that Act to limit PAC contributions to the same \$3,000 as for individuals. My amendment passed the Senate 74-7. In final action on the Federal Election Campaign Act Amendments of 1974, however, Congress set the PAC contribution limit at \$5,000 per candidate per election and the individual contribution at \$1,000.

The 1976 Act retained these limits, providing that an individual could not contribute more than \$1,000 per election per candidate, while PACs could contribute up to \$5,000 per candidate, per election.

In an attempt to restore a healthy balance to the influence exerted by individuals and political action committees, I again voted to further limit PAC contributions to \$3,000 per election during consideration of the Federal Election Campaign Act Amendments of 1977. That amendment was tabled 63-33, however, leaving intact the limits set in the 1976 Act.

More recently, in the 99th Congress, I voted for Senator Boren's amendment to increase the amount an individual could contribute to Congressional candidates in an election from \$1,000 to \$1,500, while reducing from \$5,000 to \$3,000 the amount a political action committee could give to a single candidate in an election for Federal office. That amendment passed, but Congress did not take final action on campaign finance reform.

Whatever may have been the public perception of campaign financing in the past, there today is widespread feeling that elections are principally financed by groups who have a very narrow interest as opposed to a broad public interest. The public, rightly or wrongly, perceives that elections are being "bought and sold," and that policymakers are less free to exercise judgments in the national interest because of their reliance on large contributions from special interests in getting elected. As Senator Moynihan so eloquently put it, referring to the old tax code, during one of those late night sessions when we were working on tax reform, "When that which is perfectly legal becomes morally tainted, then it's got to go." The fact is that there is an odious perception involving campaign financing and that perception must be addressed. In a democracy, the public must perceive the laws to be fair or confidence is severely undermined. In an attempt to address the public's alarm over the sources of campaign financing, Congress, on the threshold of major reform, is considering many varied approaches, among them, S. 2, the subject of this hearing today. S. 2 contains a limitation on PAC contributions and that limitation should be enacted.

Now let me address myself to what should be our second goal—encouraging small financial contributions. My particular reservations with S. 2, the Boren-Byrd Senatorial Election Campaign Act, is not the limitation of the PAC contributions in that act. I support that. My reservations, rather, center around the partial public financing provisions in the bill, and by that, I mean payments directly from the United States Treasury to political candidates. This type of payment does not give the voters any sense of participation in our democratic electoral process. There is no sense of public participation in taking money out of the public treasury and giving it to us to run for re-election. Every time the government taxes somebody or some-

thing, there is less a sense of participation. On the other hand, if we can encourage 10 to 20 million people to give \$5, \$10, or \$50 directly to a campaign, that will ensure that sense of participation we are trying to achieve.

I do not believe most candidates have explored the extent to which they can finance a campaign through small contributions. In every instance where candidates have tried to collect small contributions, they have succeeded. In my campaign for re-election in 1986, I had over 161,000 contributions—95 percent of those were contributions of \$50 or less. As a matter of fact, political action committees provided only 14 percent of my total campaign contributions.

The goal of any campaign reform legislation should be to encourage the direct financial participation in political campaigns by millions of people contributing small amounts of money directly to campaigns, while at the same time limiting larger contributions of political action committees to campaigns.

The challenge, then, is to create a device that will seek to make congressional campaigns more competitive, less dependent on large contributors, and financed by a broader segment of the population, while at the same time avoiding publicly financed campaigns paid by Treasury funds. If we're really going to move toward public financing of campaigns, let it be in a form which will give the public a sense of direct involvement and participation in the political process. If we are going to have public financing, then don't do it with funding paid directly from the United States Treasury to the campaign. Do it in any one of a number of ways that has the government pay, but leave the citizen the broadest choice. It could be a tax credit refundable or otherwise. It could be a voucher given to all citizens who, in turn, give it to the campaign to collect from the government. Russell Long even once suggested that to make this system even more effective we should devise a way to have the contribution refundable as soon as possible. He suggested that the campaign issue a receipt that the donor could immediately take to the bank and get his or her contribution back. I think such an idea has merit.

If we force candidates to finance their campaign by thousands and thousands of small contributions, then the candidate will have to go door to door, and be involved at the grass-roots level. Ironically, the candidates this will favor the most are not incumbent United States Senators or Representatives, who of necessity must spend most of the year in Washington, D.C. Rather it will favor their challengers, who can stay in the state all year long, who will have a good base of support, and who will have hundreds of followers who believe in them and will help them raise money through small donations.

The goal, then, should be to emphasize small donations given directly to deserving candidates—not some lump sum given to undeserving and deserving candidates alike.

It is my hope that we can reach a consensus and fashion legislation that will link more generous tax credits for small donations to a cap on larger PAC contributions. A tax credit or voucher mechanism will achieve the same goals as Treasury public financing, but with less government intervention. Donors choose the recipients directly. The individual, rather than the government, determines to whom the funds will go. The link between voters and candidates is strengthened by the necessary grass-roots approach, which requires candidates to raise money in small quantities from many donors, making them aware of contributors' concerns and hence more responsive once elected. That link is weakened under Treasury public financing. I am not suggesting that a tax credit should be enacted alone, but rather that it should be part of a comprehensive measure containing other campaign finance restrictions. I look forward to working with my colleagues in the weeks and months ahead to come up with just such a package.

The CHAIRMAN. Thank you very much, Senator Packwood. You have made some good points this morning. I have no questions of the Senator. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, I have no questions. I thank the Senator from Oregon, because I think he does press an issue that is important. I am not quite sure legislatively how you do it, although the Senator offers some suggestions.

Senator PACKWOOD. I might say, if the committee is interested, there are several ways other than a tax credit. The difficulty with a tax credit is first you have got to file a return, or if it is refundable, at least you have to apply for it. And then you have to wait

for it. But there are ways to do it, and if the committee is seriously interested I would be happy to help the committee draft it.

Senator DECONCINI. Well, I cannot speak for the committee, but I certainly would welcome anything the Senator would give us as to a mechanism to consider.

Senator PACKWOOD. I thank the Senator and I will make sure that—

The CHAIRMAN. I made the statement earlier, at our March 5th hearing, that the "Achilles' heel" of this legislation is public financing. You are beginning to bridge that gap. As the Supreme Court has said, we have to have public financing before we can have a voluntary limit. This does raise some problems, and any innovative idea you might come up with—and you have come up with several in the past—might prove helpful to this committee. We look forward to working with you in the future, Senator Packwood.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator DECONCINI. Mr. Chairman, if the Chair would yield a minute. I agree with the Chairman of the committee that I am concerned about that particular area of public financing. I would much rather see some other thing, but this is the first, perhaps, alternative that I have seen that we can look at.

The CHAIRMAN. We thank you, Bob, for your attendance this morning.

Senator DECONCINI. Mr. Chairman, I ask permission that at the beginning of the record for this morning my statement appear as if read.

The CHAIRMAN. Your statement will be included in the record.

Senator DECONCINI. I did want to tell the Chairman, it says laudatory things about the Chairman's diligence in continuously addressing this problem.

The CHAIRMAN. I thank the Senator from Arizona. I need all the help I can get this morning. Senator Chiles, you are next. We appreciate your being with us this morning.

TESTIMONY OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator CHILES. Thank you, Mr. Chairman. I appreciate the opportunity to be here before you.

The CHAIRMAN. If you wish to place your full statement in the record, we will accept it and you may summarize.

Senator CHILES. Thank you, sir. I want to add my voice to the other members who believe it is time to limit and control the money that goes into campaigns to elect Congress. I am fully aware that I am preaching to the choir when I say to this committee that there is too much money involved in today's campaigns. But from my perspective a major problem with a lot of campaign money is that too much of it comes from contributors to special interest political action committees.

I know by the nature of the beast within us all as politicians that each of us has given a lot of thought to the relationship between campaign money, how you get it, and how it affects the way you do your job.

When I weigh the arguments, I cannot agree on the whole that political action committees stimulate individual participation. I know that there are some good arguments that you can make for that. But I do not really think that was their purpose. I do not think it is their main purpose now. I do not think that is the reason for the tremendous proliferation and the tremendous growth that we see.

I think the reverse is more accurate. They tend to stifle participation and, more importantly, they become a barrier between the Member and many of his constituents, because they foster the well-founded perception that money can be more important than the individual's vote.

To me, the result dilutes the principle of one man, one vote. This country has worked very hard to fulfill that promise, and I think we should be watchful of any tears from that fabric.

I understand the task this Committee faces in order to put together a reform bill. I do genuinely believe that the time is right and I sense that there is a consensus brewing now among the Members. Timing is so important when it comes to pushing major legislation. I thought this was going to be some years off. But it now appears to be building and, because of that, I am introducing legislation today that I hope the Committee will also consider in its deliberations.

The thrust is to add two major features to S. 2. One is to place an aggregate limit of \$300,000 on how much PACs can contribute in any Federal election.

There are some sixty-one PACs that now contribute more than that. That number is growing every day. It seems to me that if we are imposing a limit on the amount of money that is going to be spent overall, we should reduce the tremendous power of some of these PACs who are contributing over a million and a half dollars to elections.

We already have limits on the amount an individual can contribute. We have a limit on the amount that a PAC can contribute to an individual. To me there should also be an aggregate limit on the amount that they can contribute in a year directly to candidates.

Had the \$300,000 limit been in place for the 1986 elections, 61 PAC's would have had to cut their contributions and over \$42 million in PAC money would have been removed or spent differently. It would not have gone directly to the candidates.

The other change I am proposing is the structuring of a campaign season that would start on Labor Day and run through election day. When I ran the first time, in 1970, under our State law—which the Supreme Court had not spoken to at that time—you started the campaign, but could not spend until you qualified, and you qualified in July. Even for the primaries, you could not have any public advertising. You could go out and run if you wanted to, but you could not print any material, you could not get on television.

So if we set that time for the campaign season, if one candidate did apply for public financing there would not be any restriction on the one that is taking public financing to have to wait until Labor Day. But where both of the candidates apply in the Federal election, you would start that season on Labor Day. I think the public

would participate much more, because that is about the time that they start opening up their minds that an election is taking place. To me it would be a good addition if we could have a feature like that in the bill.

Thank you.

[The prepared statement of Senator Chiles follows:]

STATEMENT OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, thank you for this opportunity to appear before this committee.

Let me add my voice to those of other Members who believe it is time to limit and control the money going to campaigns to elect Senators.

I am fully aware that I am preaching to the choir when I say to this committee there is just too much money involved in today's campaigns. From my perspective a major problem with a lot of the campaign money out there is too much of it is coming from out of State contributors to special interest political action committees.

I know that by the nature of the beast within all of us as politicians, each of us has given a lot of thought to the relationship between campaigns, money, how you get it, and how it affects the way you do your job.

When I weigh the arguments, I cannot agree that on the whole political action committees stimulate individual participation.

I think the reverse is more accurate. They tend to stifle participation. And more importantly, PACs become a barrier between a Member and many of his constituents because they foster the well-founded perception that money can be more important than an individual's vote.

To me that result dilutes the principle of "one man, one vote". This country has worked hard to fulfill that promise. I think we should be very watchful of any tears from that fabric.

Mr. Chairman, let me just say I understand the task this committee faces in order to mark up a reform bill. I do genuinely believe the time is right. I sense a consensus brewing among the Members of the Senate.

Timing is so important when it comes to pushing major legislation through the Congress. The commitment this committee has to mark up a bill is the best chance at a major reform we have had in a decade.

If we do not make it this session, I fear a disaster will be required to move us.

I will be introducing legislation today which I invite the committee to consider in its deliberations.

The thrust of my proposal is that we add two major features to S. 2, the Boren-Byrd Bill.

I am an original cosponsor and fully support that legislation. I think the public and many Members of the Senate are ready to move to partial public financing.

I am recommending an aggregate limit of \$300,000 on how much PAC's can contribute to all Federal candidates in any 2-year election cycle.

We already have limits on the amount an individual can contribute in the aggregate. I believe PAC's, which define themselves as groups of individuals, should be similarly restrained.

Had the \$300,000 limit been in place for the recent 1986 elections, 61 PAC's would have had to cut their contributions, and over \$43 million in PAC money would have been removed or spent differently.

The other change I am proposing is the structuring of a campaign season, running from Labor Day through Election Day.

Candidates participating in the public financing system would be prohibited from spending public funds until after Labor Day. They could launch their campaigns with the "threshold" funds needed to qualify for public financing, but could spend no publicly provided funds prior to Labor Day.

Secondly, candidates who participate in public financing would not be permitted to spend money on TV advertisements before Labor Day.

Limiting the timeframe for this important, yet misused means of communication, will serve to change the way the public looks at political campaigns. The restrictions will lead to a public expectation of when it is time to pay serious attention to the choices.

Taken together with the other provisions of S. 2, I believe the structuring of a "campaign season" will blunt the impact of negative ads.

Let me add that the "campaign season" provisions apply when all the candidates opt for the publicly financed system. They do not apply if an opponent decides to forgo public money and raise his own. Here the provisions of S. 2 kick in. If the

opponent exceeds the spending limit, the person who stays with the publicly financed system gets his public money doubled.

Mr. Chairman, my distinguished colleagues, I believe we all know that the time has come for reform in the way we finance and conduct our election campaigns.

How much more indebted to special interests must we become before we act to restore our credibility both to our constituents and to ourselves?

The present system is wrong. Representative democracy is not a reality when special interests and big money take precedence over the public interest. Continuing with the present system is simply perpetuating a wrong. As enlightened leaders of our citizens, we must right it.

Thank you, Mr. Chairman. I will be pleased to answer any questions.

Senator DECONCINI [presiding]. Thank you very much.

You made reference to a limit of total PAC's, \$300,000 or something, and I did not quite understand. Maybe your statement spelled it out. Is that per election or per year? Would your recommendation be that that limitation be for, say, the 1988 election or for 1987 and then in 1988?

Senator CHILES. I think it would be both. That limitation would just apply to the amount that they could contribute to candidates. They could spend other monies if they wanted to under my—

Senator DECONCINI. But if you had a limit—if the Senator would yield—

Senator CHILES. Yes.

Senator DECONCINI. If you had a limit of \$300,000, it would be for that election?

Senator CHILES. That is right.

Senator DECONCINI. And not \$300,000 for 1987 and then another \$300,000 for 1988.

Senator CHILES. That is right, for the election.

Senator DECONCINI. Just out of curiosity, where did you get that figure and do you recommend any proportional amount for smaller States, or would that be blanket for everybody?

Senator CHILES. Well, these are Federal PAC's, so it would be the blanket amount.

Senator DECONCINI. For everybody?

Senator CHILES. That is right.

Senator DECONCINI. So the State of South Carolina or Arizona could get it as well as California or—

Senator CHILES. That is right.

Senator DECONCINI. I certainly agree with the Senator from Florida on trying to limit the exposure time and—

Senator CHILES. Well, I hope that the committee will consider that.

Senator DECONCINI. That is an excellent idea. I do not know quite how to do that yet, but it is an excellent idea and I thank the Senator from Florida.

Senator CHILES. Thank you.

Senator DECONCINI. I yield to the Senator from Washington if he has any questions.

Senator ADAMS. Thank you very much.

Senator, it is good to have you here and, as Chairman of the Budget Committee, I have had a question about how much it might cost if we were to raise the credit or contributions to a higher level. I think the problem with the very small contributions now is they nearly all have to be collected by direct mail which costs an enor-

mous amount of money. And we allow at the present time only a \$50 credit and I was wondering if perhaps, either through your staff or you may have this knowledge, what the costs would be and—this is kind of halfway between public financing and the system we have now—if we were to go to, say, a \$200 or \$300 credit for individual contributions.

Senator CHILES. I do not know that figure. I can try to get some figures for you, but I do not have that.

Senator ADAMS. Could you try through your staff, because I know this is in your jurisdiction—

Senator CHILES. We will try to do that.

Senator ADAMS. What do you think about the potential, and I have just been through a campaign—

Senator CHILES. I think it is—

Senator ADAMS. I am trying to think of a way of getting individuals to contribute and feel that they have a participation and have some incentive for them.

Senator CHILES. I think up to some reasonable threshold, but I am not sure that I would go to \$300.

Senator ADAMS. Well, I just picked that figure, but \$50 I would—

Senator CHILES. I happen to be a \$100 fellow myself, so I have a bias there.

The CHAIRMAN. As he laughs. [Laughter.]

Senator CHILES. But I will try to look at that.

Senator ADAMS. I would appreciate that, if you could, and I am very interested in the rest of your testimony.

Thank you.

Senator DECONCINI. Mr. Chairman, I just want to comment that Senator Chiles—I do not know how he does it but, God bless him—is an example that I use all the time. I have not been able to practice it, Senator Chiles, what you do with contribution limitations, because I am not sure I can get elected without raising the kind of money I have to raise. Obviously, you and Senator Proxmire and perhaps some others, have imposed on yourselves some very severe restrictions and been able to succeed, and I think the record ought to show that it can be done—

Senator CHILES. We keep testing it, Senator, and I am going to test it one more time.

Senator DECONCINI. I understand, and your tests have been good in the past and I kind of have a feeling that you are one of the leaders of what the public wants. They do not want these campaigns to be perceived as, or in reality be big money games, as they have turned out to be, and you deserve credit for taking that.

Senator CHILES. I trust that you are right.

Senator DECONCINI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

We are facing somewhat of a dilemma. Some of the Republican members who were on the agenda cannot testify due to an unscheduled White House meeting. We will welcome their full statements as part of the record.

Senator Humphrey, if you have a statement that you wish to include in the record, and then proceed to highlight it, Gordon, that would be fine.

Senator HUMPHREY. It is not long.

The CHAIRMAN. That would be fine.

**TESTIMONY OF HON. GORDON HUMPHREY, A U.S. SENATOR
FROM THE STATE OF NEW HAMPSHIRE**

Senator HUMPHREY. Thank you, Mr. Chairman, for the opportunity to testify.

A fundamental problem with our campaign finance system is the marked decline of the relative importance of the individual contributor. The current limits on individual contributions were established in 1974. Those limits are \$1,000 for individual contributions per candidate per election, with an overall cap of \$25,000 per individual for all candidates.

I emphasize that those restrictions, those limitations are now thirteen years old. Something has happened since then called inflation. It is not as bad as it used to be, but in over thirteen years it is pretty big.

At the time of the enactment, these limits were perceived as reasonable and ethical. They were intended to limit the influence of single, large contributors in favor of smaller contributors.

Since then, as I have pointed out, inflation has significantly, substantially, enormously eroded the value of these limitations. A contribution worth \$1,000 in 1974 is worth less than \$500 today. It is no wonder that some candidates are relying more and more on political action committees.

Mr. Chairman, I propose to adjust the limits on individual contributions to restore their 1974 values, to eliminate the effect of inflation. The \$1,000 limit should be now set at \$2,223, rounded off, if you like, and the \$25,000 limit should be set at \$55,575. That simply would restore the limits on individual contributions to the level at which they were set in 1974, thirteen years ago. If they were ethical and reasonable at the time, then the same value and the same purchasing power is ethical and reasonable today.

I would further urge the Committee to index these limitations in the future.

Well, I will just place the rest of my statement in the record and you can consider all these complicated reforms to your heart's content. I do hope you will keep in mind, my colleagues, this simple reform, this reasonable reform, this needed reform which I have proposed—namely to restore the value of the individual contribution limitation to what it was in 1974, by eliminating the inflation effect and indexing them in the future.

Thank you.

[The prepared statement of Senator Humphrey follows:]

**STATEMENT OF HON. GORDON J. HUMPHREY, A U.S. SENATOR FROM THE STATE OF
NEW HAMPSHIRE**

Mr. Chairman, thank you for the opportunity to testify. A fundamental problem with our campaign finance system is the marked decline of the relative importance of the individual contributor over the last 13 years. The current limits on individual contributions were established in the Federal Election Campaign Act of 1974. Those

limits are \$1,000 for individual contributions per candidate per election with an overall cap of \$25,000 per individual for all candidates.

At the time of enactment, these limits were perceived as reasonable and ethical. They were intended to limit the influence of single, large contributors in favor of a greater number of small contributors.

Since then, however, inflation has significantly eroded the value of individual contributions. A contribution worth \$1,000 in 1974 is worth less than \$500 today. It's no wonder some candidates are relying more and more on political action committees to finance their campaigns. The importance of the individual has been diminished by inflation while the cost of campaigns has soared.

Mr. Chairman, I propose to adjust these limits on individual contributions to their 1974 values. The \$1,000 limit should be set at \$2,223 and the \$25,000 limit should be set at \$55,575. These new values are based on the Department of Labor's Consumer Price Index for all urban consumers.

In addition, I propose to index these limits to the Consumer Price Index. This would protect these limits against future erosion from inflation. Adjustments would be made annually. I would note that two other limitations now contained in the Federal Election Campaign Act—those governing overall limits in Presidential campaign spending and those governing contributions by national political committees—are already indexed for inflation.

In my view, the problem with campaign finance reform lies not in the rise of the PAC's, but rather in the decline of the individual. According to a 1986 study compiled by the House Democratic Study Group, since 1974, individual contributions as a percentage of all campaign contributions have declined from 76 to 61 percent for Senate campaigns and from 73 to 47 percent for House campaigns.

With the cost of campaigns increasing, the lower value of the individual contribution becomes magnified. The only way to halt this decline is to insulate the individual contribution from the source of the decline—by restoring contributions to their original value and then indexing to inflation in order to secure permanent protection.

Mr. Chairman, if we are serious about the role of the individual citizen in the Democratic process, we will adopt this proposal. The success of our political system is based upon the participation of each and every citizen. This participation has been seriously impaired by inflation.

I would urge the committee to include this proposal in any campaign finance reform bill which is reported out to the full Senate for consideration.

Mr. Chairman, I would ask that a copy of the letter of certification from Secretary of Labor Brock to FEC Chairman Thomas and a copy of the table compiled by the Democratic Study Group to which I made reference appear in the record at the close of my remarks.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

February 3, 1987

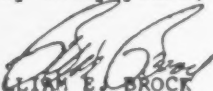
The Honorable Scott Thomas
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Thomas:

I hereby certify that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 122.3 percent from its 1974 annual average of 147.7 to its 1986 annual average of 328.4. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 122.3 percent from its 1974 annual average of 100 to its 1986 annual average of 222.3.

This certification is in accordance with Section 112 of the 1976 Amendments to the Federal Election Campaign Act (P.L. 94-283, 2 U.S.C. 441a) and with your request that the Consumer Price Index for All Urban Consumers be used in the calculations. A notice of this certification will be published in the Federal Register.

Very truly yours,


WILLIAM E. BROCK

WEB:jfp

SELECTED INDEPENDENT EXPENDITURES 1985-86
BY ORGANIZATION AND CANDIDATE
IN EXCESS OF \$100,000
SENATE

<u>Organization/Candidate</u>	<u>Against</u>	<u>For</u>
Natl. Comm. to Preserve Social Security		
Abdnor	281,244	
Denton	281,244	
Mattingly	281,244	
Symms	281,244	
Realtors Political Action Committee		
Abdnor		115,165
Broyhill		246,029
Jones		422,312
Kramer		323,125
American Medical Assoc. PAC		
Kramer		100,600
National Conservative PAC		
Wirth	114,389	
NRA Political Victory Fund		
Specter		102,086
Washington Fair Share for Citizen Action Political Action Committee	27,302	27,302

Source: Preliminary FEC Index of Independent Expenditures. Final index showing post-general reporting activity will be issued in mid-1987.

The CHAIRMAN. Thank you, Senator Humphrey.

I know it does not bother you, but lots of times you have gone up-stream against some of the opinions that we have had around this town——

Senator HUMPHREY. I am always going down-stream and the rest are going upstream.

The CHAIRMAN. I understand that, but it is hard both ways under those circumstances. When most of the pieces of legislation have been introduced and most of the testimony we have heard go directly 180 degrees away from your proposal—where you want to increase contribution limits from \$25,000 to \$55,000 and from \$1,000 to \$2,100 and whatever it is——

Senator HUMPHREY. May I interject?

The CHAIRMAN. Yes.

Senator HUMPHREY. No, I do not propose to increase the value.

The CHAIRMAN. No, you do not increase the value. You increase the amount though.

Senator HUMPHREY. The nominal amount.

The CHAIRMAN. Yes.

Senator HUMPHREY. But the value is simply restored to what it was.

The CHAIRMAN. But everyone else is saying cut the limit from \$5,000 to \$3,000.

I find in my studies, since we've started on this subject now, that the contributions for presidential campaigns have declined fairly sharply, 4 to 5 percent, and that means we have less income. Number two, the cost has accelerated, and even though we may have a little surplus now, after the 1988 presidential campaign we will have a significantly smaller amount to be ready for 1992. Once you increase the checkoff by a dollar and the box becomes \$2 instead of \$1, I do not know how many people will decline or what the rate of decline will be, but there is some fear that that might happen. Do you have any feel from your constituents or in talking with your people what that might do as it relates to public financing?

Senator HUMPHREY. Nope. I would just——

The CHAIRMAN. I thought I might get a better answer out of you than "nope," but it sounds like you would go over well in Eastern Kentucky. [Laughter.]

Senator HUMPHREY. I just want to——

The CHAIRMAN. They don't elaborate. It is just either yes or no.

Senator HUMPHREY. If the concern is that the role of individual citizens is being diminished by the presence of PACs, then let's invigorate individual participation by restoring the limits on individual contributions, restoring the purchasing power to what it was in 1974 when those limitations were thought to be ethical and reasonable. They are no less ethical and reasonable today, it seems to me.

The CHAIRMAN. Do you think that will increase contributions from New Hampshire if you increase it to over \$2,000 and the multi-candidate PAC's to over \$55,000?

Senator HUMPHREY. Individual contributions, yup.

The CHAIRMAN. In dollars or in individuals? If your limit is \$1,000 today and tomorrow it is \$2,000, are you still going to give the \$1,000, or are you going to be just as anxious to give the \$2,000?

Senator HUMPHREY. Well, that depends upon the individual, and I cannot forecast that. The point is to take the total pools of money contributed by individuals and by PACs, and in my opinion—and I think there can be no question—it will raise the total of the pool contributed by individuals relative to that of PACs.

The CHAIRMAN. Senator DeConcini?

Senator DECONCINI. Senator Humphrey, I appreciate your position and I thank you for it. Have you taken a position on any other parts of S. 2 as to voluntary public financing or do you oppose or care to state whether you oppose or support any of it or oppose all of it or—

Senator HUMPHREY. As we like to say to our constituents, I thought I would examine the matter when it has been reported out of committee.

Senator DECONCINI. That is fair enough. That is fair enough. Thank you.

Senator HUMPHREY. I really have not as yet.

Senator DECONCINI. That is fair enough. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator HUMPHREY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator DeConcini, do you have anything you want to add? Do you want to go back and give your statement, since you said so many nice things about me in it?

Senator DECONCINI. Well, I am sorry it is already in the record, but I would be glad to read it again.

The CHAIRMAN. On second thought, I believe I will leave that one alone.

We do have Senator Moynihan, who is to be here before 10:30, and also Senator Stennis. They agreed to wait while some of the others have an opportunity to give their statements in order to make a 10 o'clock markup.

We have run into a little lull here. Many of our Republican colleagues have been called to the White House and they were about half of the group that were to be testifying this morning. We are expecting several Senators in the next few minutes. So I will let the Committee stand in recess until we have the next witness.

[Short recess.]

The CHAIRMAN. The Committee will come to order.

We now have a distinguished Senator ready to testify, Senator Nickles, of Oklahoma.

Don, we have been allowing those who want to to put their statements in the record in full and summarize them. Whatever you want to do, you may proceed. We are delighted to see you this morning.

TESTIMONY OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you, and it is a pleasure to join you and the Committee this morning on the subject of campaign reform.

I have an extensive statement, with several tables, and I will be happy to include those in the record and just make a few extraneous additional remarks.

Mr. Chairman, I hope when you examine extensively the issue of campaign reform—and I congratulate you on the job that you are doing in these hearings and considering the various proposals—I hope that you will look at limiting independent expenditures.

It is my opinion that independent expenditures are probably the most abused area of campaign finance. It is the one area which most needs reform. In this Senator's opinion, to have limitations on individuals of \$1,000 is fine. The same is true for limitations on PACs of \$5,000. However, I would support an increase in the limit. I do not know if it makes a lot of difference. On the other hand, there are no caps, no limitations on independent expenditures, which are supported largely by PACs. Without limitations, these organizations can go in and put \$500,000 or, if they so desire, \$1,000,000 or \$2,000,000 or \$5,000,000 into a race. Right now that is legal.

To say that we are having campaign reform and put limitations on individuals and on PAC's, without having limitations on independent expenditures, just defies logic and it is not campaign reform. It is allowing a loophole to be abused, and it has been abused. It has been abused in many Senate races. We have seen it grow and grow substantially.

In 1976, according to the FEC, there was a total of \$387,000 spent on independent expenditures. In the 1986 race, there was more than \$7,000,000 spent on independent expenditures. Again, in many of these we are not talking about \$1,000 or \$2,000. I have no problem with that. As a matter of fact, my proposal would be to place a limit on independent expenditures equal to the limits that we have on PAC's.

In looking at an analysis of the 1986 races, we find that many independent expenditure groups utilize negative campaigns. However, the majority of expenditures go predominantly to positive advertisement, but in my opinion they all abuse a loophole.

Let me give you an example, Mr. Chairman. Most people are aware that in 1984, an individual in California put \$1.1 million in negative campaigning in the Illinois Senate race, but yet the constituents of Illinois contributing to that campaign were limited to \$1,000. I find that to be abusing the system.

We find under present law that we limit PACs to \$5,000 per election cycle, so they can contribute \$10,000 in most races if they so desire, and if you look at most Senate races you are looking at an average cost of \$3,000,000. So \$5,000 or \$10,000 is still a pretty minuscule amount.

We find that some of these independent expenditure groups, which are PAC's in reality, put \$100,000, \$200,000, \$300,000, \$400,000, and in excess of \$500,000 into races.

I was running last year, as the Chairman is aware, and we had one group involved in our race that put in over \$526,000 in behalf of my opponent. When you consider a small State and you start talking about independent expenditures of \$500,000—if I remember our figures correctly, we spent about \$700,000 in the last month of

the campaign and here is an outside group almost matching our buy, not to mention what our opponent was doing.

Again, I think we need to have some restrictions on independent expenditures, if not we do not have true campaign reform.

We have independent expenditures on both sides of the ideological split. We have conservative ones, we have liberal ones, we have Democratic ones and we have Republican ones. It cuts on both sides. In some cases, for some Senators, it cut both ways.

It is interesting to see some of the analyses of where some of the money came from. Conservatives are going to be saying, well, Don Nickles, how could you do that, we use this to help elect good conservative Senators, friends of yours. Again, I find it just as abusive for any group.

The Realtors Political Action Committee put in \$246,000 on behalf of Senator Broyhill. They also spent \$422,000 on behalf of Congressman Jones running against me. This report by the FEC is not complete. We found it was \$526,000.

The National Conservative PAC put in \$114,000 against Senator Wirth. The National Committee to Preserve Social Security put in \$281,000 each against four different Senators.

Again, you are not talking about \$2,000 and \$5,000. We are talking about hundreds of thousands of dollars, and it is growing. Unless it is curbed, I will predict to the Senator from Connecticut that next year it is going to be a lot more than \$7,000,000. In 1988, it will grow again. Again, you are going to see these groups trying to manipulate the elections and political outcomes in this country, and again they are on both political sides.

I see the NRA, the National Rifle Association, has been active, the National Conservative PAC, the American Medical Association, the Realtors Political Action group, the National Committee to Preserve Social Security—all of these have made contributions on behalf of or in opposition to one Senatorial candidate or another in excess of \$100,000.

As a matter of fact, Mr. Chairman, I would say if we do not limit independent expenditures we should not have a limitation on individuals or on PAC's, either one.

Again, to take the example of the Illinois race. If you have one individual outside the State put in \$1.1 million, if you are running and you have to offset that, you have to find another 1,000 or 1,100 individuals who will contribute \$1,000, just to offset possibly the negative advertising that one individual is doing. So you realize the magnitude or the abusive nature of the system as it is today.

Again, I compliment you on the good work that you are doing on thoroughly examining this complex and difficult issue and I would just urge you to look closely at some means or method of handling this difficult issue. If not I think it is an abuse that is just now in its infancy and it will tend to grow in unbelievable proportions.

To take an example, it would be legal, if the Senator from Connecticut had a good friend or if there was just a very wealthy individual, say, in the State of Oklahoma or in any State to contribute massive amounts of funds. He could say I am going to put in \$5,000,000 against the following Senators and in a State like Idaho or Wyoming and a lot of States, \$5,000,000 is more than you can even contemplate using, but that is presently legal.

Again, in the case of an independent expenditure group, maybe what they say is true and maybe what they say is not true, but we all have been in situations trying to judge the veracity of different commercials coming in late in the ball game and try to clean up some of the inaccurate statements that have been made. You just see the complexity of it.

I do not think an offset which has been proposed by some in saying, well, if we have independent expenditures in excess of a certain amount, then public financing is used. I think that is a bad solution.

You may have good commercials coming from that independent group, but you may have bad ones. You may have inaccurate ones. You may want to get some more public financing so you may have somebody dig up an independent committee and say run \$100,000 of very poorly done commercials on behalf of my opponent so that I can get \$100,000 of public financing. That to me is not a very good alternative.

I would think the best alternative would be to limit independent expenditures with the same requirements that we have with PAC's.

One other comment, we need greater, more detailed reporting on the communications expenditures. For the 1984 races, where a lot of business groups, organized labor and others mounted communications efforts and attention they put in races, I think limitations and reporting would be in order for that as well.

I thank you, Mr. Chairman.

[The prepared statement of Senator Nickles follows:]

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Mr. Chairman. No campaign finance reform should be implemented until we address the issue of unbridled independent expenditures. Independent expenditures for congressional races have risen from \$387,000 in the 1976 election cycle to more than \$7 million for the 1986 elections, a seventeen-fold increase.

What we are witnessing is an alarming trend toward increased independent expenditures as a way of avoiding the limitations placed on political action committees and individuals. It is inconsistent to place limitations on individuals and PACs, claiming they have undue influence on elections, and then allow unlimited independent expenditures. If senators and congressmen are concerned about what influence can be bought for \$5,000, just imagine what \$500,000 would do.

To address this problem, I propose placing a limit on independent expenditures of \$5,000 per election cycle. This limitation will make these expenditures consistent with the PAC contribution limits which serve the same purpose. This approach is similar to a provision contained in legislation proposed by Senator Goldwater in the 99th Congress.

I realize there is a constitutional question about this procedure arising from the Supreme Court's *Buckley vs. Valeo* decision in 1976. In that case, certain spending and contribution limits, including independent expenditures, imposed by the 1974 Federal Election Campaign Act Amendments were held unconstitutional by restricting first amendment freedom of speech rights. However, independent expenditures have increased substantially since that decision and I believe the court could very well overturn its previous decision because of the new problem independent expenditures have created.

What is particularly troublesome is when PACs actually utilize independent expenditures to avoid the contribution limits. At the very least, independent expenditures made through PACs should be limited. In this case, we have instances where organizations have run out of candidates to contribute to and use their excess funds for massive campaign blitzes through independent expenditures.

To insure that all election activities are treated similarly, I also propose to limit communications expenditures by organizations involved in political campaigns. These communications constitute a large influence in federal elections. These com-

munications totaled \$2.2 million in the 1982 elections cycle and \$6.4 million in the 1984 cycle. Under current law, corporations and labor unions are permitted to use their treasury funds to solicit its membership for both partisan and non-partisan purposes. This includes endorsement of candidates, get-out-the-vote and registration drives, and the administration of PACs. The partisan communications in excess of \$2,000 are required to be reported. Non-partisan activities, such as get-out-the-vote and registration, are not required to be reported. Therefore, there is no accurate way to determine the magnitude of these expenditures. I would propose greater disclosure of these expenses.

Let me give some examples. In the 1984 election cycle, the AFL-CIO COPE Political Committee spent \$1.4 million in these communication costs, including \$1.2 million for Walter Mondale and \$52,085 for my colleague, Senator Simon. The National Rifle Association spent \$1.0 million with \$27,000 each toward Senators Boschwitz and Helms and \$90,000 toward Senator Gramm. None of these expenditures were wrong, they serve only as examples of independent political communications which get around current limits set for PACs.

I have first hand experience of this unchecked growth of independent expenditures. The Independent Expenditures Committee of the National Association of Realtors, RPAC, committed \$526,000 in independent expenditures on behalf of my opponent in the last election. The most recent Independent Expenditure Index published by the FEC shows a lower amount of \$422,000 which does not include amounts spent in certain monthly reports and post-general reports. The NAR represents more than 700,000 realtors nation-wide and more than 20,000 members in my state. Yet, the decision to spend this enormous amount of money was vested solely in an 11 member committee and a political consultant, with no representatives from Oklahoma. The majority of realtors in Oklahoma were furious over this decision. Their contributions have funded these expenditures which were contrary to their sentiments. Such a process violates the spirit of the law governing PAC spending limitations.

This excessive spending allowance also corrupts the election process. Garry South of the National Association of Realtors' Independent Expenditures Committee was quoted in the *National Journal* as saying, "If the organization (National Association of Realtors) carefully runs a campaign, the long-run benefits for its effectiveness will be enhanced and the politicians ultimately will respect us." If that isn't undue influence in elections, I don't know what is. Let me note that the tone of the comment indicates that they consider they "run" a campaign. What are we coming to when an organization, besides the candidate, runs his or her campaign?

There are many celebrated cases where independent expenditures have been a decisive factor in a race. In 1984, Michael Goland, a California resident, was largely responsible in unseating Senator Charles Percy by infusing \$1,100,740 in negative advertising into that race. In 1986, independent expenditures played a significant role in several races: According to figures supplied by the FEC, The National Committee to Preserve Social Security, the largest user of independent expenditures, spent \$281,244 in negative advertising in each of four races against Senators Abdnor, Denton, Mattingly, and Symms . . . all but one of which lost re-election. The Realtors Political Action Committee also spent enormous amounts in four Senate races . . . \$115,165 for Abdnor, \$246,029 for Broyhill, \$422,312 for Jones, and \$323,125 for Kramer.

While I am willing to look at alternatives to capping these expenditures, I am opposed to public financing offsetting independent expenditures. I look forward to working with the committee in developing a solution to the problems facing our campaign financing laws.

INDEPENDENT EXPENDITURES 1985-86
MAJOR ORGANIZATIONS
SENATE

<u>Organization</u>	<u>Against</u>	<u>For</u>	<u>Total</u>
National Committee to Preserve Social Security PAC	1,124,976	805,325	1,930,301
Realtors Political Action Committee		1,519,936	1,519,936
American Medical Association Political Action Comm.		1,015,256	1,015,256
National Conservative Political Action Committee	434,907	545,692	980,599
NRA Political Victory Fund	37,738	578,057	615,795
Auto Dealers for Free Trade PAC		249,100	249,100
Fund for a Conservative Majority (AKA Young American Campaign)	1,000	234,476	235,476
American Citizens for Political Action	45,132	90,606	135,738
Congressional Majority Committee	100,487		100,487
East Texas First	99,121		99,121
Handgun Control Inc. Political Action Comm. (HCI PAC)	94,787		94,787
National Congressional Club	18,649	56,053	74,702
Life Amendment Political Action Committee, Inc.	74,490		74,490
National Right to Life Political Action Committee		64,665	64,665
Conservatives for a Secure America	15,968	45,716	61,684
Senior Political Action Committee (Wash. D.C.)	11,675	45,476	57,151
Free Congress PAC (formerly: Cmte For Survival of a Free Congress)	41,762		41,762

Excerpt from "The Declining Role of Individual Contributions in Financing Congressional Campaigns", Richard P. Conlon, Exec. Dir., Democratic Study Group; Conference on Campaign Financing, UVA Law School, Charlottesville, VA, April 3-4, 1986.

SENATE

TRENDS IN CAMPAIGN CONTRIBUTIONS
TO GENERAL ELECTION CANDIDATES

1974 - 1984

Note: Table shows the actual amount (in millions) received from each category each year, that amount adjusted for inflation in 1984 dollars, and the percent of total receipts such amounts represent.

RECEIPTS	1974	1976	1978	1980	1982	1984
*TOTAL RECEIPTS						
Actual	\$ 28.2	\$ 39.1	\$ 68.9	\$ 83.7	\$127.0	\$156.2
Adjusted	56.5	68.0	104.4	105.3	137.3	156.2
% of Total	100%	100%	100%	100%	100%	100%
ALL INDIVIDUAL						
Actual	21.4	26.9	50.6	52.4	70.3	95.7
Adjusted	42.9	46.7	63.8	65.8	76.0	95.7
% of Total	76%	69%	73%	62%	55%	61%
Under \$100						
Actual	10.6	11.1	29.2	20.7	22.9	36.0
Adjusted	21.2	19.3	36.8	26.0	24.7	36.0
% of Total	38%	28%	42%	25%	18%	23%
Under \$200						
Actual	11.7	12.3	32.4	23.0	25.4	40.0
Adjusted	23.4	21.4	40.9	28.9	27.5	40.0
% of Total	41%	31%	47%	27%	20%	26%
Over \$200						
Actual	9.7	14.6	18.2	29.4	44.9	55.7
Adjusted	19.4	21.4	27.6	36.9	48.5	55.7
% of Total	34%	37%	26%	35%	35%	36%
PACs						
Actual	3.1	5.8	8.9	15.9	21.8	28.1
Adjusted	6.2	10.1	11.2	20.1	23.6	28.1
% of Total	11%	15%	13%	19%	17%	18%
*PARTIES						
Actual	1.7	1.4	4.1	7.7	12.2	11.3
Adjusted	3.4	2.4	6.2	9.7	13.1	11.3
% of Total	6%	3%	6%	9%	10%	7%
ALL OTHER						
Actual	2.0	5.0	5.3	7.7	22.7	21.1
Adjusted	4.0	8.7	6.7	9.7	25.0	21.1
% of Total	7%	13%	8%	9%	18%	14%

INDEPENDENT EXPENDITURES, 1985-86
IN EXCESS OF \$100,000
SENATE

<u>Candidate</u>	<u>Against</u>	<u>For</u>	<u>Total</u>
Kramer	0	536,662	536,662
Abdnor	281,244	221,786	503,030
Denton	283,549	179,752	463,301
Jones	0	423,623	423,623
Symms	283,924	125,945	409,869
Broyhill	0	341,507	341,507
Mattingly	281,501	6,943	288,444
Cranston	139,725	30,937	170,662
Specter	49,909	111,123	161,032
Wirth	119,564	17,916	137,480
Hart	105,625	0	105,625
Hawkins	14,426	88,740	103,166

Source: Preliminary FEC Index of Independent Expenditures. Final index showing post-general reporting activity will be issued in mid-1987.

The CHAIRMAN. Thank you, Senator.

You have posed a question concerning independent expenditures. Not being a lawyer, I have been advised that under *Buckley v. Valeo*, we cannot limit independent spending under the law. We can only require reporting and disclosure.

Now, if that remains a fact and we do not amend the Constitution—there is an amendment to set realistic caps and so forth—we can give the person help such as in your colleague's bill, Senator Boren's.

Now, we do have a problem. We do have to be able to address that, but how do we address it? We look forward to working with you to see if we can do something about independent expenditures.

Senator NICKLES. Mr. Chairman, I appreciate your comment and I will be more than happy to work with you. I understand the constitutional question in *Buckley v. Valeo*, but I think they made a mistake, and I would hope the Court would review that decision. When you have a case that says we are going to have unlimited, no controls over this type of expenditure, but we are going to control everybody else, I think that makes no sense.

The CHAIRMAN. It is as if they are trying to control the rich under this one, too, isn't it?

Senator NICKLES. It is a real mess. Again, I hope that either they would review it or maybe Congress would look at it. There was another approach that was called for that said, well, if you had independent expenditures the media that offered those or ran those ads would have to offer free time as a match. That was one proposal. I do not endorse that proposal either, although it would probably have the effect that I would like to see and that would be to stop independent expenditures.

I will be happy to work with you. Maybe we could construct some legislation that would better suit a constitutional challenge, and I will be happy to do so.

The CHAIRMAN. Thank you, Senator.

Senator Dodd.

Senator DODD. Just quickly. That seems to be the question. I first of all appreciate your testimony, Don, this morning.

I note that frustration in your voice. I have not been, that I know of, anyway, subjected to expenditures by independent committees and obviously you have and you point out the frustrating difficulty in a campaign as opposed to having to face not only your opponent but those other outside groups that are harder to identify and to go after.

I think Senator Hollings, I do not know others, I am not sure who else, introduced or reintroduced the constitutional amendment that would say that for the purpose—I think the language is something like the purposes of federal elections, money is not speech or words to that effect, so that it would remove the *Buckley v. Valeo* problems.

Would you be willing to sponsor or cosponsor an amendment like that? It seems to get to the essence of what you are talking about. You do not like the idea of trying to allow free time or trade some sort of bureaucratic structure that would somehow take care of the problem. It seems to me the only way you are going to take care of

that problem simply is by that approach, so that we can legislate it effectively.

Senator NICKLES. It would be my preference not to require a constitutional amendment. I think the Court erred in *Buckley v. Valeo* and I would like to have them revisit the question. If constitutionally we can go out and tell your constituents in Connecticut they can only put in \$1,000 in your race, but if they form an independent group they can put in \$1,000,000, I think that is absurd.

You see, the Court in *Buckley v. Valeo*, said political contributions are okay to limit and independent expenditures are not okay to limit. Independent expenditures were minuscule at that time, the time of that decision.

I would hope that we would have them readdress the question, because we are looking, in my opinion, at very flagrant taking advantage of that decision where you have groups putting in \$1,000,000, one individual, or \$500 or whatever.

Senator DODD. You understand, the point in *Buckley v. Valeo* was not the size of the contribution but in defense of a person's First Amendment rights.

Senator NICKLES. I understand, but again your constituent has a First Amendment right as well and that is the reason why I made the editorial comment that if we are not going to limit independent expenditures I don't think we should have limitations on other individuals, because that is a limitation on free speech as well. So I think the decision that was made left a lot to be desired and maybe we could reconstruct it and have them visit that issue again. We have had a change in Justices since that time.

I would hope there would be some way of doing it besides a constitutional amendment. I hate to think we have to go to all the trouble of amending the Constitution because the Court decided, well, these contributions we will limit and these we will not. I will give you an example.

Take either one of these, the AMA, the National Rifle Association or the Realtors PAC, here is one part of the package—

The CHAIRMAN. Or NCPAC.

Senator NICKLES. Or NCPAC, they were one of the original ones. They can do \$5,000 on this side of the table, but here is another little committee, they will list this one under independent and they can do \$10,000,000. Now, that is absurd but that is the natural result of their decision. I cannot help but think we could get them to either readdress the question or we could craft language outside of a constitutional amendment. Maybe we cannot, and if that is the only recourse, then possibly that should be visited.

Senator Goldwater introduced basically this same concept a couple of years ago and I think there is a lot of merit to it.

Senator DODD. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Don. We look forward to working with you and we appreciate your coming this morning.

Senator NICKLES. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Evans, please.

Dan, we appreciate you accommodating us today and we hope we can accommodate you. Your full statement will be included in the record, if you want to highlight it, or whatever you prefer.

TESTIMONY OF HON. DANIEL J. EVANS, A U.S. SENATOR FROM
THE STATE OF WASHINGTON

Senator EVANS. Thank you, Mr. Chairman. I will do just that.

First, let me associate myself with my colleague from Oklahoma. I think unquestionably if you measured campaigning by sleaze factor, that independent expenditures on campaigns are probably the highest of the sleaze factor in campaigns today.

I know very well the constitutional problems we face, but we either ought to attempt to revisit it, see if there is a way around it, or if the only alternative available to us is an amendment to the Constitution, then perhaps we have to visit that. Frankly, I am a fundamentalist on the Constitution, I believe we should amend it only rarely and for extraordinary circumstances, and I would hope that there is some way we can get campaigning down to a reasonable level without a constitutional amendment.

Let me speak to two or three items that I think are important in this issue. First, most of the focus has been on political action committees. I do not believe that necessarily political action committees are the biggest problem we have before us. Independent expenditures I think now or soon will be far larger as a problem than the problems of political action committees and their contributions.

I am not at all sure that political action committees for the most part are all that evil. I will never forget the very first political action committee contribution I received in the congressional election in 1983. It was a meeting of a company, of all of those employees who had contributed to their political action committee. They had a dinner. I appeared, they presented me with their contributions, it was a contribution of \$2,000 in the form of fifty checks from the individual contributors to that political action committee, a dramatic measure, I think, of just how widespread that support was and how individualized it was. I think that is pretty generally the case in terms of political action committee contributions.

Let me speak of several proposals which I think may help. The most important one is simply to require that to the degree candidates use radio and television political advertising, that political advertising be the candidate personally speaking to the voters. I know that the broadcasters have suggested expanding the concept of use. I think we ought to go all the way. Why not say to candidates that whatever political advertising you buy cannot be the glossy productions of some Madison Avenue advertising agency, but rather has to be the candidate speaking to the voters. And I think if we did that one thing we would probably have a greater effect in limiting the expenditures, most of which go for political advertising. I am not sure how many candidates would want to appear too often, too frequently expose themselves to the voters. I think that it would certainly raise the level of political campaigning, because I doubt very much that candidates would spend most of their personal time on television attacking their opponent, and if they did I think they would be viewed badly by citizens and voters. I suspect that we would find very quickly that a rising share of what was said on television and what was said on radio by candidates personally would be positive in nature, would reflect their ideas and their

beliefs as they run for public office, and that is devoutly to be wished.

The CHAIRMAN. I am sure glad you are here. I believe that.

Senator EVANS. I will send to you a complete statement. I do not know how to handle the problems of independent advertising, but I do think that that is one that we will find very quickly is overwhelmingly the biggest problem we face and I just wish the Committee well in their efforts to find a constitutional way to control it.

Thank you.

[The prepared statement of Senator Evans follows:]

STATEMENT OF HON. DANIEL J. EVANS, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Once again, we dare to tread into the campaign finance minefield. Few issues are as close to the heart of American politicians than modifications to campaign finance rules.

Today a number of my colleagues have set forth their perspectives on this issue. All agree that the current system is flawed. There are significant differences, however, on what has been identified as the root evil of current campaign finance practices and on what direction we should take to solve the problem.

As a starting point, we should look where we have been and where we are today. My train of thought immediately shifts to the majesty of the Lincoln-Douglas debates which have been replaced today by the travesty of our current process. Too many have given campaign consultants and political strategists carte blanche to create the "white noise" of political advertising which threatens to drown out completely what little legitimate political discourse remains.

As U.S. Senators, we have a double interest in improving the campaign finance system. On one hand, we strive to restore integrity and credibility to the profession we have chosen. While this effort requires a multi-faceted package of legislative reforms, campaign finance reform is an important component.

On the other hand, we are bound to protect our Constitution, the repository of our most closely held political beliefs and the fundamental charter of our government. With these principles in mind, I offer the following.

Above all else, we should seek greater citizen participation in the electoral process. With each passing election, the concept of one-man, one-vote is being eroded as fewer and fewer people bother even to go to their neighborhood school or community center to choose those who will represent them in government.

No doubt a variety of factors are responsible for declining participation. But if we expect to engage in a rational reform effort, we should take care to identify the real problems and not those which on the surface appear to be the problems.

A case in point are political action committees (PAC's). PAC's are one of the favorite targets of the reformers. Yet, PAC's are probably not the most significant problem.

While I compliment Senator Boren for his efforts in pushing to keep this issue of reform on the front burner, I disagree with the central theme of his reform legislation—that all PAC's are evil.

My reason for disagreeing is simple. In essence, PAC's are just people. People who for one reason or another have banded together to make a political statement, to support a particular proposition, or simply to promote greater political involvement.

For many, contributing to or through their PAC is the only way they are able to participate in the process outside of voting. I recall one of my first PAC contributions when campaigning for the Senate in 1983. Following a speech to several hundred employees of a company with a PAC, I received a contribution of \$2,000 in the form of 50 individual checks.

I am sure there is anecdotal evidence which supports the claims of those who say "pack up the PAC's". But I suspect that the vast majority of PAC's are actually positive forces in the electoral process.

Let's not forget that PAC's are the children of past attempts to reform the finance system. I believe the true problems lie elsewhere, and that PAC's will actually benefit if we are able to resolve the more fundamental questions.

Let me focus on what I think are the true evils.

OVERALL COSTS OF CAMPAIGNING

I had an interesting experience in 1983 after an 11-year hiatus in campaigning for public office. I was nominated by the Governor and then faced a special election period only 60 days long. During that time, we raised and spent more than \$2 million. Not very much of that, certainly a minor share, was from PAC contributions. But it was a staggering amount of money considering that in all of the previous races that I had run—four races for the state legislature, and three races for Governor—I did not spend, combined, that much money.

Looking back over the past 10 years, however, I can understand why. The costs of campaign consultants and political advertising have risen at a dizzying pace. For example, television advertising costs have risen during the last decade by more than 400 percent while the cost of newspaper advertising has jumped 170 percent.

We simply must rein in this cost growth. I believe there is no surer road to a complete breakdown of our electoral process than to ignore burgeoning campaign costs.

Some have suggested that public financing is the answer. The time has not yet come to accept public financing in an effort to hold down these costs. Cost elimination is an uncertain science and the potential cost to the federal treasury is too great. I, for one, am not ready in these austere times to dip into the public purse to finance political campaigns. But I do believe that direct and indirect steps can be taken to hold down the cost of campaigning.

INDEPENDENT EXPENDITURES

Controlling independent expenditures should be the major focus of our reform efforts. Limits on PAC's will almost certainly increase less accountable, and thus more dangerous, independent campaign activities.

The Boren bill takes a good first step toward limiting independent expenditures by defining carefully what is an independent expenditure and requiring television advertisements financed by such expenditures to continuously display a disclaimer throughout the length of the advertisement.

The Committee may wish to go a step further. I suggest that independent organizations not only be required to display a disclaimer but require such a group to spend at least 50 percent of their time indicating who they are, how much they are spending on the campaign in question, and the purpose of the organization and a history of its activities.

PERSONAL WEALTH

Controls on contributing a huge amount of personal money to a campaign should also be considered. One possible approach is to double or triple the contribution limits for any candidate who faces someone overly generous to his or her own campaign.

"USE" DEFINITION

I believe that by refining the definition of "use" in campaign advertising, we can do more to solve the current problem than by any other single initiative we can undertake.

Under the current FCC interpretation of "use", a candidate is entitled to the lowest unit charge and no-censorship protection by appearing for only a fleeting moment at the end of a media spot.

I intend to offer legislation in the next week to direct the FCC to redefine "use" requirements. My bill would mandate that the FCC define "substantial appearance" such that a candidate would be required to be identified, or identifiable, for 100 percent of the media spot.

Such a proposal would help in several ways. First, the candidate would be forced to sell his or her candidacy directly to the voters; a more straightforward approach than is necessary under current law.

Second, require candidates to think twice before engaging in negative advertising. How many candidates would continue to pound away at their opponents if they had to do it personally?

A likely third benefit would be reduced overall spending for television, which absorbs a large share of funds in most campaigns. According to Dr. Herb Alexander, USC Professor of Political Science and Director of the Citizens' Research Foundation, U.S. Senate candidates devote 40 percent to 60 percent of their total campaign budget to television advertising.

I commend Senators Inouye and Rudman on their legislation, "Fairness in Political Advertising Act" or commonly referred to as the "talking heads" legislation, that seeks a similar goal by amending the Federal Election Campaign Act. Taken together, their effort to amend the election laws and mine to revise FCC interpretation should provide us with a necessary first step toward successful reform.

Before coming to a close, I believe it is important to note Senators Hollings' and Heflin's resolution calling for a constitutional amendment which would allow Congress to set campaign expenditure limits. Like a Balanced Budget Amendment, I believe that we should exhaust all other options before considering such a drastic measure. A move to amend the Constitution suggests our inability to deal with a problem and signals defeat.

Rather than falsely accusing PAC's, rather than accepting public financing during these times of great budget restraint, and rather than potentially scarring our Constitution, we should look to the candidates themselves for the solution.

The CHAIRMAN. Thank you, Senator Evans.

One of the items that is not included in the Boren-Byrd bill is something similar to what you have just described. Several of us have introduced, and hopefully it might become a part of this piece of legislation, a bill which we refer to as the "talking heads legislation."

Senator EVANS. Right.

The CHAIRMAN. I personally agree with your proposal. How we could finally fix it into the legislation, I am not sure, but under the circumstances I am hopeful that we might be able to.

I have no questions.

Senator EVANS. I might suggest, Mr. Chairman, if we move in that direction, I would just urge that we consider seriously moving all the way in that direction, rather than a partial use or a certain percentage or something of that nature. I think if we went all the way we would have a dramatic impact on the way in which campaigns are conducted in this country.

The CHAIRMAN. Senator Dodd, do you have any questions?

Senator DODD. Just to thank the Senator for being here this morning. I was struck, when you were talking about the individualized effort and that experience you had with one political action committee. I would like to think you are correct, but my suspicions are that that was the exception, rather than the rule in terms of dealing with political action committees.

Senator EVANS. I am not so sure it is the exception, and I am certain there are some on both sides of that issue. I know at least in our own State and a good many of the other PACs that are local in nature, sometimes representing fairly large companies or organizations, that clearly the contributions that make up the PAC contributions do come from the individuals and generally from fairly small contributions.

Senator DODD. Well, I do not question they come from the individuals. I question whether or not you are getting the kind of input that you witnessed in terms of which candidates will receive the contributions. And you may be absolutely correct, I may be dead wrong on that. It is just merely a sense I have about it.

One reason I raised the point at all was because there has been a suggestion in the House by some Members over there, in fact last year I think it enjoyed something in the neighborhood of 100 to 150 cosponsors. It did not go anywhere, but their thrust was looking at the figures in terms of the quantity of tax contributions versus the quantity of individual candidates, and you find the lines are chang-

ing dramatically. Fewer and fewer individual contributions and more and more political action contributions. Their legislation was designed to try and encourage more of the smaller contributors by providing the \$100 credit and limiting contributions to a maximum of \$100, the idea of sort of forcing campaigns to go after more of the smaller contributors, which is what I think all of us would like to see, more people participate.

That scene you have described, with all of those \$50 checks, is something that I think would solve more of that. I think we would have less demand for or some sort of reform in dealing with campaign financing. I wonder if you have looked at that House legislation at all or are familiar with it?

Senator EVANS. I have not looked at that specifically, but just as you were commenting upon this, a thought came to mind that maybe it would be useful in terms of PAC contributions to require that the checks not be the checks of a political action committee but be the accumulation of the individual checks that went into that political action committee so a candidate could see much more clearly who the individuals were who were contributing.

Senator DODD. In some cases—and you were talking about instances with labor—in large organizations, the contributions are so small.

Senator EVANS. Well, this would suffice that.

The CHAIRMAN. I am inclined to agree with the Senator. I find that many of the PACs have been organized, I would say in my State, to encourage the small giver. The individual's attitude would be, "My \$10 contribution would be insignificant, but with 100 contributors, we gave an amount that will be recognized and our point will be made."

I think what we lose sight of in condemning PAC contributions is that often they do not amount to a great deal of money. One Senator this morning who raised \$5 or \$6 million indicated that 17 percent of his total campaign contributions were received from PACs.

A PAC which I am familiar with in my State is a small operation, with 70 percent of the employees belonging to the PAC. They strained to give me a sizable check in my campaign, totalling \$1,500. I was selected, after they met and considered the candidates' positions on different issues.

So I do appreciate what you are trying to do and I am interested in working with you as it relates to the "talking heads."

Senator STEVENS, do you have any comments or questions?

Senator STEVENS. I am sorry, Mr. Chairman, that I was at another meeting and was not able to hear your statement.

The CHAIRMAN. We announced that your absence was not of your own making.

Senator STEVENS. Thank you, Mr. Chairman.

I appreciate your statement, Senator Evans, and I find the same situation in my State that you find in yours. As a matter of fact, the worst thing that I think can happen to a candidate is to have the PAC group vote not to give him a contribution. No one has looked at that and that is a very powerful message for an incumbent, I will tell you.

Thank you, Mr. Chairman.

Senator EVANS. It seems to me that we sometimes ignore not the independent contributions, which I spoke of earlier and that Senator Nickles spoke of, but the personal contributions, the large ones, clear up to the maximum allowed, that certainly can be at least as influential as PAC contributions. When someone gives the maximum personally and his spouse gives the maximum, and each or the children and Aunt Nellie and everybody else in the family, all combines to present a personal contribution and the accumulation of that personal contribution can easily be as much or more than the maximum PAC contributions of a particular company or even a particular interest group.

The CHAIRMAN. I have no further questions, Dan. We certainly thank you for coming, and we thank you for making that extra effort to accommodate us.

Senator EVANS. Thank you.

The CHAIRMAN. Thank you very much.

We still have eight Senators to testify, and it is obvious that we have been sitting here waiting for the witnesses to arrive to give their testimony. The Committee will just stand in recess until the witnesses arrive.

[Short recess.]

The CHAIRMAN. The Committee will come to order.

The distinguished Senator from California, Democratic Whip Senator Cranston, is here. Senator, we are delighted to see you, and ask that you proceed. If you want to put your full statement in the record, that would be fine, or summarize it. You may proceed as you wish.

TESTIMONY OF HON. ALAN CRANSTON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator CRANSTON. I appreciate your welcome very much.

I do have a carefully prepared statement that I would like to submit for the record. I would rather just speak to you from some notes and from my heart about the matters that are before you. I have very strong feelings about them.

The costs of running for public office in the United States—the Senate and other offices—are obviously all too high and escalating at an incredible rate. Senate candidates spent \$189 million during the 1986 election cycle. Senate candidates obviously have to spend much too much of their time fund raising.

I was advised by my campaign managers and by the Democratic Senatorial Campaign Committee last year that I should spend at least one-half of the time I spent campaigning raising money. I probably spent more than half my time raising money.

Today, in many respects candidates campaign for money rather than for votes. We must put an end to this ridiculous electoral system. When you have to spend so much time working on the money side, you are not able to meet as many voters, you are not able to address as many meetings of voters as you would like, you cannot spend as much time studying and discussing the issues as you would like.

My own experience last year was in what I believe turned out to be the most expensive Senate race in American history. Apparent-

ly we broke the record set in North Carolina 2 years before, and I expect that the record that we set last year will be broken in New York or California or somewhere else next year.

I am now the best financed Democratic Senate candidate in American history—but I got outspent! Together, my opponent and I obviously spent very sizable sums.

The proposals for campaign finance reform that I want to outline briefly for you are as follows:

One, I believe strongly that we should have public financing of Senate general elections. Public funds should be a grant as in the presidential election system.

Public financing would free candidates from the time consuming burden of fund raising, and public funds would free candidates from the need to seek large contributions from individuals and from PAC's.

Now, let me stress that I am not saying that to help those of us who are candidates—whether in office now and perhaps planning to run again, or not now in public office but planning to seek it. Rather, I believe the people of America will best be served if we change the system—best be served if we go to a system of public financing, so that those who are able to make sizable contributions or to raise sizable contributions do not have an advantage in terms of access—and we all know that access is the inevitable consequence of contributions—over those who are unable to give either time or money to the campaign process.

Number two, I do not think there ought to be a qualifying mechanism for public financing—except winning the nomination of a major party. I believe that major party candidates who receive the nomination of their party should be eligible for public funds. If we require candidates to raise “threshold” money, as has been proposed, then there will be the continued need for time-consuming efforts to raise money and the continued focus, to a very significant degree, on the raising of money.

If it is felt that there should be some further mechanism for qualifying for matching funds, then let us look for an alternative to money. One alternative could be getting some fairly sizable number of signatures on a petition of support for the office.

I know that collecting signatures would require the use of money, too, because to get a sizable number of signatures you have to spend some money. If you do it professionally, it may require a substantial amount of money, but at least this approach would reduce the emphasis upon money gathering in a campaign.

Number three, I think we should come up with a law that creates expenditure limits in both primary and general elections. Candidates who will accept public funds in the general election should be required to observe a limit on spending in the primary. That is one way to get a limit in the primary, despite the Supreme Court ruling that we cannot set limits except under certain circumstances. It will not work to have limits on expenditures in general elections for candidates who accept public financing if there is no limit in the primaries. Without primary limits candidates will spend all they can spend in the primary to build momentum for the general election and to have impact in the general election—

and so they will also spend a lot of time raising money for that purpose.

I went through that experience in my own race for re-election last year. I spent quite a bit of money on television in the primary, which some viewed as unorthodox, because I wanted to prepare the stage for what I wanted to do immediately after I became the nominee—and I wanted to have some momentum going at that time.

Number four, I believe that we should have aggregate PAC limits. If we have full public financing, no PAC or private contribution should be allowed in the general election. Contributions from PACs to a candidate in primary elections should be limited in the aggregate by requiring that PAC contributions should not comprise more than 20 or 30 percent—or maybe a bit more—of the primary election expenditure limit.

I recognize that there are problems in some small states where there is not that much money available from local constituents and where PAC's provide a sizable part of what candidates under present circumstances require. But if we achieve some of the reforms we are considering, perhaps that dependency on PAC money can be diminished even in small states.

Number five, I believe that we should adopt a constitutional amendment—one has been introduced by Senators Hollings and Heflin—that provides for the right of Congress to set limits on what can be spent in campaigns. As we all know, the Supreme Court has knocked down our right to do that. Senator Simon has pledged to hold hearings on that amendment in the appropriate subcommittee of the Judiciary Committee.

Under prevailing circumstances, where there can be no limit on what an individual can spend, those who do not possess huge resources are at a severe disadvantage in any contest with a wealthy opponent. I understand that millionaires now comprise more than half the membership of the Senate. That makes the Senate less representative than it should be—and this circumstance surely stems in part from unlimited campaign financing.

Number six, I believe we should rebuild the political parties. I believe that individual contributions to the parties should be removed from the aggregate annual individual contribution limit of \$25,000. I appeal to Democrats and Republicans on this point.

I believe deeply in the two-party system. I believe the two-party system is in dire jeopardy now, and when the two-party system is in danger our whole democracy is conceivably in danger.

There has been a very fine report that I want to allude to briefly. It is the Bicentennial Analysis of the American Political Structure, a report and recommendations of the Committee on the Constitutional System. Some of our colleagues served on the committee. It was headed by Nancy Kassebaum, a Senator from Kansas, C. Douglas Dillon, and Lloyd Cutler, and other members included Nicholas Brady, former Senator from New Jersey, Senator Pat Moynihan, Norman Ornstein of the American Enterprise Institute, and some other very, very thoughtful Americans—Republicans, Democrats, and Independents.

Their basic thesis is that the decline of parties in our country has a lot to do with what they call the deadlock in our democracy.

They believe that the American people, concerned about the failures and weaknesses of governmental performance, tend to blame particular politicians or the complexity of the modern world. But the members of this distinguished Committee dispute this view, and they instead express the view that today's public officials are no less competent, either individually or as a group, than in earlier days.

"Nor do our problems, as complex as they are, defy rational solutions," they add.

The difficulty lies mainly in the diffuse structure of the Executive-Legislative process and in the decline of party loyalty and cohesion at all levels of the political system. The separation of powers, as a principle of constitutional structure, has served us well in preventing tyranny, but it has done so by encouraging confrontation, indecision, and deadlock, and by diffusing accountability.

Ideally, our two-party system should counteract the centrifugal tendencies of the separations of powers, with each party's politicians committed to a common philosophy of government and to specific program goals for which they stand accountable at the next election. In fact, throughout most of the 19th Century and until after the end of World War II, the loyalty of most politicians to their party was deeply felt. Once in office, they recognized a common stake in the success of the party's governance and their joint accountability as candidates of the party at the next election.

Then this report expresses some very, very thoughtful views on the decline of our parties and the threat to our 2-party system, and what that decline means to our democracy.

They cite the following events that have tended to dilute and diminish the role of parties and their influence:

In recent decades, political reforms and technological changes have worked together to weaken the parties and undermine their ability to draw the separated parts of the government into coherent action. The rise of the welfare state took away many opportunities for service by which the parties had held the loyalty of their followers. Civil service stripped the parties of much of their patronage. The direct primary in presidential elections dealt a blow to party cohesiveness.

And then, very importantly:

Modern technology has enabled candidates to appeal to voters directly, through television, computer assisted mailing and telephone campaigns, lessening their dependence on party organizations and leaders. The key to these technologies is money, but candidates found they could raise money directly for themselves better than through the party organization. Interest groups prefer to contribute directly to selected candidates, rather than to a party. The habit of voters changed in this new environment.

Party loyalty had been the rule for most of the 19th century, but by the last quarter of the 20th century one-third of all voters were registered as Independents. Even among voters registering with parties, ticket splitting became the norm.

No one wants to roll the clock back to the time when party bosses and local machines dominated the political process, but we must recognize that the weakening of parties in the electoral arena has contributed to the disintegration of party cohesion among the officials we elect to public office. Members of Congress who owe their election less to the party than to their own endeavors and their own sources of funds have little incentive to cooperate with party leaders in the Congress, much less their party's incumbent in the White House.

We have had divided government (one party winning the White House and the other a majority in one or both Houses of Congress) 60 percent of the time since 1956, and 80 percent of the time since 1968, compared to less than 25 percent of the time from the adoption of the Constitution until World War II.

In 1900, only 4 percent of all congressional districts were carried by one party's Presidential candidate and the other party's candidate for Member of the House. By 1984, this happened in 44 percent of all congressional districts.

They then attribute the deadlock in our democracy—I share their view that we have a significant deadlock in our democracy—to these developments. We have so many independent operators in the House and Senate who get here by their own resources, by the funding they raise. This leaves them with no real allegiance to either party.

The deadlock that ensues from this situation is reflected in the budget deficit and our incapacity to come to grips with that deficit; in the trade deficit; in education and our inability to do what we ought to be doing in that field, in our failures in arms control, and in our failure to develop with the executive branch a coherent policy of United States-Soviet relations.

I attended a session recently of some renowned experts on the right and on the left, hawks and doves—all of whom said we do not really have a policy towards the Soviet Union at the present time.

Senator STEVENS. Do you really think that people who are selected by the party structure would be more democratic than those selected by the people themselves?

Senator CRANSTON. No, I am not saying that. I am saying that—

Senator STEVENS. That is what the report says.

Senator CRANSTON. We are getting to a situation where we do not have the cohesiveness in our government that can be brought about by the cement of parties. We have much more individualism. Individualism is great, but at times you need to start pulling together. I do not see us able to achieve that adequately under these circumstances.

Senator STEVENS. Can you see an individual, such as the late Senator Ed Zorinsky coming to the Senate, having switched from being a Republican Mayor of Omaha to a Democratic candidate, if this law was in effect?

Senator CRANSTON. Yes, I can see that. I am not proposing any particular law that relates to this. There are a number of approaches.

Senator STEVENS. But that is the conclusion, that you have to have your party support before you get public financing. Is that not what you are really saying—

Senator CRANSTON. No.

Senator STEVENS. You want public financing so that the party can determine who gets the money?

Senator CRANSTON. No, I am not saying that. Whoever gets the nomination will get public funding. It will be different in different states, rather obviously.

Senator STEVENS. Well, what if you had John Stennis running unopposed? Suppose there is a John Stennis or a Warren Magnuson or a Bill Knowland, someone running unopposed—

Senator CRANSTON. I believe that person—

Senator STEVENS. No one will finance his opponent. But if “public financing” is in effect, there is money out there, whoever the party selects is going to get the money, and he will have opposition and it will probably be used for party-building, will it not?

Senator CRANSTON. Well, if there is no opponent, let us specify no public financing.

Senator STEVENS. By definition, there is going to be an opponent if there is public money available. I never saw anyone pass up that kind of money. Can you imagine you would be unopposed any time—

Senator CRANSTON. No.

Senator STEVENS. That public money was there on the other side?

Senator CRANSTON. No.

Senator STEVENS. Neither can I.

Senator CRANSTON. No, I think there would be opposition and I do not think it is unhealthy to have assured opposition.

Senator STEVENS. You do not think it is possible for a candidate to reach the point where he or she has gained the total respect of the State and not be opposed by taxpayers' money?

Senator CRANSTON. I think that if there is an opponent, there should be public financing. If there is no opposition, the candidate should not get public financing. If there is opposition, the candidate should have the choice of whether he or she wishes to spend it or not spend it. We have some people here in the Senate who turn back money, as you know, that they are allocated for their office accounts. They do not spend it. There are some people who seek office who might well decide that they do not want to spend public money, that they do not need it, that they can win without it. If they can, they should proceed in that fashion.

Let me add just one point that really goes beyond the immediate matters before this committee. We have an appallingly low and steadily declining level of participation in elections in this country. I think part of the decline relates to the present system of campaign finance. I think part of the decline relates to other developments, some of which I have already enumerated.

Let me give you a little bit of history that we have developed in exploring all this.

When our Constitution was first written, when our country was first created, when our democracy was brand new, voter turnout was very, very low. The first citizens had no experience in the ways and means of democracy. It took them a while to get involved—and the barriers then to participation in those early days were overwhelming. The word and the law was this: "only white male owners of property need apply." There are few records of exactly what happened in the first elections, but I've been digging around in the archives, and the first apparent facts are fascinating. It's estimated that only 3.5 percent of the total population voted in the 1788 elections for the House of Representatives. Would-be voters faced all sorts of difficulties.

For example, in South Carolina some voters had to travel 150 miles by horse, wagon, or on foot to vote. Slowly over the decades, as the habit, the practice, the system developed, there was a steady rise in participation. It became easier to vote. There were more polling places. The franchise broadened.

There was a consistent rise until about the middle of the 1870's. Only 27 percent of the Nation's men voted in 1824. The figure rose to 79 percent. Then a decline began. There has been a slow but steady erosion of voter participation ever since.

So in terms of the percent of people of voting age who vote, the first American century was one of expansion of our democracy, while the second century has been one of contraction.

In presidential elections since 1960, there has been a drop in participation. In 1986, only 37 percent of the people of voting age who were eligible to vote actually voted—meaning a little bit more than 18 percent of the people determined the outcome of that election.

I think there is a real danger to democracy if we become a non-participatory democracy, with fewer and fewer people making the decisions. There are many reasons for this decline. Campaign financing is only one of them. All of us can think of other reasons for it.

I think our goal must be—and I have urged this committee to accept this goal—to reverse this trend, to make the third American century one of rising participation. Many Americans cannot vote when election day comes around because they did not bother to register. When they begin to think about the election, it is too late to register and they cannot vote. There are many, many barriers to registering and voting. I think we should explore what those barriers are and see if we can move or reduce some of them.

I know you, Mr. Chairman, are interested in this particular aspect of participation. I hope you are as well, Mr. Stevens, as the Ranking Republican Member of this committee. These are issues for another day, but I hope that after we are through with the campaign finance reform effort, we can move on to explore what else we can do to make it possible for all Americans to be able to participate in the electoral process.

That is my message to you. Thank you.

[The prepared statement of Senator Cranston follows:]

STATEMENT OF HON. ALAN CRANSTON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am pleased to have the opportunity to testify before this committee on campaign finance reform. This is an issue of utmost importance, and the time for Congress to act is long overdue. I commend the Chairman for holding hearings on this issue so promptly. I hope the committee will act expeditiously to report reform legislation to the full Senate.

The time has come for campaign finance reform. The costs of running for the United States Senate are simply too high. Too much time must be spent raising money. No longer can we tolerate a system which requires candidates to spend at least half their time fundraising. The 1986 Senate elections were the most expensive in our nation's history. During the 1986 election cycle Senate candidates spent \$189 million. Senate election campaigns have ceased to be opportunities for candidates to present their ideas and their capacities to the electorate. Campaigns have become multi-year fundraising drives. We must reduce the costs of Senate campaigns and we must reduce the amount of time, money and effort devoted to raising money to fund those campaigns. We need to stop the exponential escalation of election costs, and we need to do it now.

I believe that campaign finance reform legislation should contain four basic elements.

There should be public financing in the general election.

There should be expenditure limits, in both the primary and general elections.

There should be aggregate PAC limits.

And there should be provisions to strengthen our political parties.

There must be public financing of Senate general elections. There must be an alternative to the countless hours spent trying to raise the money to run a serious campaign. Senate candidates must be freed from the dependence on large contributors and political action committees which the current system necessitates. Without the need to spend over half their time raising money, candidates once again will be

able to campaign for office. We will be able to share our ideas, our programs, our characteristics with the voters. Today candidates campaign for funds, not for votes. We must put an end to that ridiculous electoral system.

Second, there must be expenditure limits in both the primary and general elections. Without expenditure limits in both the primary and general elections, the pernicious level of spending which currently pervades our system will simply be moved from the general election to the primary election. Candidates will raise and spend as much money as they can during the primary, in order to maximize their competitive position in the general election.

Third, there must be limits on the total amount of money which political action committees can give to candidates. We must remove the appearance of the undue influence of special interest groups by limiting the amount of money which a candidate can accept from PAC's.

Finally, campaign finance reform should strengthen our political parties. The national party committees no longer should have to compete with candidates, with PAC's, and with each other for money.

None of these elements is easily achieved. Each imposes costs on our political system and on ourselves as candidates. But each is crucial to comprehensive and meaningful campaign finance reform.

This morning I would like to share with the members of the Committee my suggestions for achieving campaign finance reform.

Candidates who qualify for public funds in the general election should receive a public grant, as in the presidential election system. Some of the reform bills before the Committee propose that public funds be provided as matching funds to small individual contributions. I oppose a matching system. A matching system would replace our current system, which requires candidates to spend enormous amounts of time raising large amounts of money from large contributors, with an onerous system requiring candidates to spend large amounts of time raising money in small amounts from large contributors. A public grant to the nominees of major parties would assure all qualified candidates of adequate funds and would free candidates from the burden of fundraising.

Most public financing proposals require a candidate to demonstrate support for his or her candidacy in order to qualify for federal funds. The campaign finance reform proposals before the Committee all require that support be demonstrated by the ability to raise a "threshold" sum of money in small individual contributions. I am troubled by such proposals. Using a triggering mechanism dependent on small contributions requires candidates to spend a great deal of time fundraising, and thus contradicts one of the purposes of campaign finance reform. Such proposals also place one more dependence on money in Senate campaigns. Other qualifying mechanisms, such as signatures on a petition, also necessitate using money. I propose that there be no qualifying mechanism for major party candidates. Receiving his or her party's nomination should be enough to enable a candidate to receive public funds.

I propose a public financing system which establishes primary and general election expenditure limits in each state and provides public funds to major party candidates. Minor party candidates would receive funds under the same formula that applies to minor party candidates in presidential elections.

It has been suggested that any limitation on campaign expenditures is automatically an "incumbent protection act." I disagree. Expenditure limits for Senate elections should be set at levels which enable all candidates, incumbents and challengers alike, in all states, large and small alike, to run competitive campaigns.

It is not enough to limit campaign expenditures in general elections. For campaign finance reform to be meaningful, there must be expenditure limits imposed on primary elections as well. The bill which Senators Mitchell and Baucus have introduced provides for expenditure limits in primaries, and I commend the Senators for their comprehensive approach to campaign finance reform.

I recognize the problems we face in creating a system of fair expenditure limits for primary elections. Unlike general elections, primary elections occur at different times of the year—some as early as March of the election year, some as late as October. Similarly, a candidate in a hotly contested primary faces a much greater demand on his or her resources than a candidate with no primary opposition. This distinction must be taken into account in setting expenditure limits for primary elections. No candidate should be hurt simply by the date of the primary. No candidate should be disadvantaged by a contested primary which depletes campaign resources.

The Supreme Court has ruled that limits on campaign expenditures only are constitutional when coupled with public financing. I do not advocate public financing of

primary elections. However, expenditure limits in both primary and general elections, coupled with public financing of general elections, would go a long way towards reducing the costs of Senate campaigns and removing the reliance of candidates on large contributions for campaign funds.

Public funding and expenditure limits are only two elements of campaign finance reform. A third element of any meaningful campaign reform bill must be limitations on aggregate PAC contributions to Senate candidates. We must remove the appearance of undue influence by special interest groups. I propose that if a candidate accepts public funding he or she may not accept PAC contributions in the general election and may accept no more than twenty percent or a bit more of the general election expenditure limit from PACs in the primary election.

Let me add, however, that I believe the influence of PACs on the political process can easily be overestimated. Special interests use individual contributions as frequently as they use PAC contributions to enhance their ends. If the officers of a company raise \$15,000 or \$20,000 in individual contributions, they may impact the candidate's consciousness more strongly than \$5,000 from the company's PAC.

Moreover, many PACs are not creatures of economic self-aggrandizement. PAC's can represent the views of a broad cross-section of middle income Americans who have little individual ability to compete in the political process except through PACs devoted to a cause such as peace, the environment, or whatever.

In my own campaigning I have not relied heavily on PAC contributions. In 1986, PAC's contributed only 14 percent of my total contributions.

Nevertheless, I urge the Committee not to make PAC's the whipping boy for all the problems of our current political campaign financing.

Finally, campaign finance reform must help our political parties regain a strong role in Senate elections. A combination of political reforms and modern technologies have reduced the importance of parties in our electoral system. A candidate used to rely on the party for electoral support. Now, each candidate creates his or her own campaign organization. Because officials are not beholden to the parties for their elections they are less likely to support the parties once in office. Lack of party cohesion diminishes the ability of party leaders to govern. We must remedy this situation.

One proposal which I strongly support is to remove individual contributions to the political parties from the aggregate annual individual contribution limit of \$25,000. Under current law, individuals may contribute \$20,000 to a national party committee and \$20,000 to each of the congressional campaign committees. The \$25,000 annual aggregate limit forces each national campaign committee to compete with their own candidates and each other for individual contributions. Removing party contributions from the aggregate annual individual limit will enable those individuals who have the resources to contribute both to their party's committees and to their party's candidates, without having to choose one over the other.

Mr. Chairman, these are four of the five most important elements of campaign finance reform. We must have public funding of Senate general elections to free candidates from the onerous task of fundraising and the dependence on large contributions. We must have primary and general election expenditure limits to reduce the escalating costs of Senate campaigns. We must have aggregate PAC limits to reduce the appearance of influence of special interests on Senate elections. And we must help our political parties regain their rightful role in the electoral process.

The fifth vital element of campaign finance reform requires a constitutional amendment to give the Congress the constitutional authority to set expenditure limits for federal elections. Senators Hollings and Heflin have introduced such an amendment. I have enthusiastically cosponsored it, and I am very pleased that Senator Simon plans to hold hearings on this amendment. I hope the Judiciary Committee will give this legislation very serious consideration.

There are other important issues which need to be addressed. I am very concerned about the appallingly low and steadily declining level of participation in elections in our country. There are undoubtedly many reasons for this, and not all the remedies lie in legislation. One major matter we can deal with is the matter of registration. A great many Americans can't vote when election day comes around because they aren't registered. Present law and practice erects many barriers to registration. We should explore what we can do to reduce and remove those barriers. I know these are issues which also concern the Chairman, and I look forward to working together in the months ahead to achieve constructive solutions to these problems—once we have dealt with campaign finance reform.

Once again, I commend the Chairman and the members of the Rules Committee for their timely consideration of campaign reform. The proposals which are before the Committee are a constructive first step towards a comprehensive campaign fi-

nance reform bill. In its consideration of these and other proposals, I urge the Committee to search for a system of campaign finance reform which creates a less expensive and more equitable system of campaign finance. We need a system which controls the exorbitant costs of running for office, which enables candidates to campaign for office rather than for funds, and which balances private and public financing of electoral contests.

We need a system which allows all candidates, incumbents, challengers, and those running for open seats, to campaign on an equal footing. But most importantly, we need a system of campaign finance which once again restores faith in the electoral system. We need a system of campaign finance which is not perceived to be dominated by special interests and wealthy individuals. We need a system of campaign finance which is fair, reasonable, and equitable, both in perception and in practice.

The CHAIRMAN. Thank you very much, Senator.

I am interested in what you have said. My dad told me at an early age, "Son, don't leave your party, change your party, the direction it is going and the position it takes." That sometimes is very difficult to do.

I heard a very prominent television commentator recently praising Tip O'Neill very highly. He said some people do not like Tip O'Neill, maybe a lot of people do not like Tip O'Neill; but this country ought to be grateful for Tip O'Neill. He made this country discuss the issues. The "Administration versus Tip O'Neill" basically is the way he put it, and he discussed the issues as they relate to the parties. That was quite an unusual statement and I reflected on that a great deal.

Alan, we have come to a point where I am not sure it makes any difference under campaign circumstances about parties. We have discovered that in 1980, when the independent PACs went after certain people and we lost the majority of the Senate, that was perfectly legitimate and a rightful role. Now we hear some of our colleagues hollering this morning because independent PAC's have been used against them. Most of them have been successful against those independent PAC's, but now we are finding that there is very strong opposition to independent PAC's.

We have our work cut out for us to try to arrive at both a consensus among the politicians, as well as a system that will be acceptable to our constituency. I have some reservations about giving the money to the party. I think we ought to have a strong two-party system. I do not think you can be an American and a student of history and not agree with that. In this day and age and the way things change, you could have a poll taken of your constituency and almost develop a campaign that would elect you based on its results, regardless of what party you are in.

I have considered adding an amendment that would prohibit a candidate from taking a professional poll six months prior to an election. Then you would hear his own thoughts, rather than what the pollsters are telling him to say. I think the people might have a different understanding of the candidate's views. Then we would have a lobbying group of professional pollsters and PR people flooding our halls.

Senator CRANSTON. That is probably kind of tough to enforce.

The CHAIRMAN. Sir?

Senator CRANSTON. That probably would be kind of tough to enforce.

The CHAIRMAN. Oh, I understand that, but it is a thought and not a bad one.

I have no questions. I do ask for your personal consideration, Senator. When this Committee labors and makes a decision regarding campaign finance reform, I hope that you will lend us your assistance. Your knowledge and understanding, after just completing one of the toughest and most expensive campaigns in our history, could be extremely helpful as we deliberate over the issue of public financing.

A question in my own mind deals with certain counties in Kentucky where unemployment is approximately 50 percent, and what effect public financing will have on them.

Senator STEVENS.

I will only say that I think the report you just read from proves the point that the local parties are strong in one party and the national party is strong in the other. I think the public has developed a new check and balance in our constitutional system, and that is to elect a President of one party and a Congress of another, and I do not think passing this bill is going to change that.

Beyond that, the statements that I have heard convince me that the problem is not where the money comes from, it is the amount that it costs to run. The *Valeo* case undid three years of work by the Congress and we ought to reverse the *Valeo* case. If we did, we could then set some meaningful expenditure limitations. Let full disclosure determine what the public thinks about where we get our money from. That in a nutshell is still my opinion.

I do not see all the evils that you see from PAC contributions as compared to individual contributions. If someone, as was said here this morning, some family can give me \$10,000—and they could if they had several individual family members involved—I wonder just how much more access they have than a thousand people who contribute to a PAC that can give me \$10,000 during the primary and general election campaign.

Senator CRANSTON. I think we are in more agreement on that point than what I ad libbed today may have indicated. My full statement makes plain that I feel there are many PACs that serve a very valuable purpose and do not represent a so-called special interest. They represent environmental issues, peace people or consumers or farmers, small farmers, or whatever.

The proposal I have made about limiting what PACs can contribute to a percentage of what can be raised in a primary is an alternative to a proposal that I do not really like, that of reducing what individual PACs can give from \$5,000 to \$3,000. I am not a PAC lambaster. I see the virtue of the PACs in many, many respects. I am generally just concerned about the time, energy and influence that candidates have to put into pursuing money. I also am concerned about what those who are able to produce money gain in terms of access and influence.

Senator STEVENS. I wish we could get an agreement that the problem is the cost of campaigning.

Senator CRANSTON. Well, I agree that the cost of campaigning is a major part of the problem and for that reason I advocate adoption of the constitutional amendment that would give us the right to limit what can be spent in campaigns. Right now, as you know, we cannot limit campaign spending. According to the Supreme

Court, the only way we can limit spending is to tie it to public financing.

Senator STEVENS. I am glad to hear that. I introduced that constitutional amendment a week after the *Valeo* case and we have never had a hearing yet in the Judiciary Committee. The one thing these hearings have gotten us is we have a commitment this year that there will be a hearing by the subcommittee chairman committed to that, Senator Simon, on the constitutional amendment that will give us the power to limit expenditures in public campaigning.

Senator CRANSTON. Let us all agree that we are going to make an all-out effort to get the constitutional amendment adopted. It goes to another committee, as you know. I would like to make one final point, Ted.

When I spoke about the decline of parties, which you suggested is a new check and balance that the people have created, I just wanted to respond to one point you made. I think you made an acute observation when you said that maybe we just created a new check and balance in the government with the divided party between control of the Congress and control of the White House. Perhaps we do not need a new check and balance, perhaps we need an opportunity to get a little bit more done.

As I understand it, when the Constitution was written the main purpose in the division of powers was to avoid tyranny and the abuse of power. We certainly have avoided the tyranny very, very well. When I spoke of what we should do to help rebuild the political parties, I had only one particular point in mind, and it was not public financing, which you perhaps thought it was. It was individual contributions to the parties. I think contributions to the two parties should be removed from the aggregate annual limit on individual contributions.

Right now, an individual can only give \$25,000 a year to a party committee or to candidates. I suggest removing the limit on what people can give to parties. Then the party committees could be strengthened, the Republican Campaign Committees, the Democratic Campaign Committees, and the State committees of both parties. Our parties would no longer have to compete with candidates and compete with PACs and compete with each other to raise money. I think we would have a healthier, stronger, more viable two-party system if we moved in that direction.

Senator STEVENS. I have got to tell you, I would oppose that, too. I see no reason for someone to be able to give \$10, \$20, \$30 thousand to a party.

Senator CRANSTON. Well, let us put a limit on it.

Senator STEVENS. But you said "take all limits off".

Senator CRANSTON. Put some limit on—If you want to talk about expenditure limits, fine. I specifically suggest getting away from including individual contributions to parties in the \$25,000 aggregate annual individual limit. Let us consider a reasonable limit. There should be a limit, I agree with that, and I am glad we agree on the constitutional amendment.

Thank you very much.

The CHAIRMAN. Well, it just proves that we can arrive at an agreement. Senator Cranston and Senator Stevens have already agreed on an element.

The next witness is one of our new Senators, Senator Harry Reid, from Nevada.

Senator, we are delighted to have you with us today. Your statement in its entirety can be included in the record. If you would like to highlight it, you may proceed, whichever way you prefer.

**TESTIMONY OF HON. HARRY REID, A U.S. SENATOR FROM THE
STATE OF NEVADA**

Senator REID. Thank you very much, Mr. Chairman.

Senator Cranston talked about having the most expensive race in the history of Senate races in the country. In mine, my opponent spent more per vote than anybody in the history of races for the United States Senate. I thought I would point that out.

The CHAIRMAN. It never pays to get the last word in, does it.

Senator REID. Mr. Chairman, Senator Stevens, I have reviewed a great deal of the testimony of the other witnesses and, rather than reiterating that which those from this body with greater experience and wider knowledge have so eloquently and adequately discussed, I would prefer simply to concur in their conclusion regarding the necessity of Boren-Byrd. I do so with no great enthusiasm for the concept of Federal funding of elections, since it has been my experience that Federal funding is an easy way to avoid the real problems of the Federal election process.

In this instance, however, the system created by Senators Boren and Byrd is well reasoned and represents about the only viable alternative for controlling the abuses with which the present system has been burdened the past several years. I would like to stress that, while those abuses do exist, many aspects of the present system contain great merit, and if enforced, when taken together with the additions of Boren-Byrd, will, I am convinced, ameliorate the current deplorable situation.

Notice, please, Mr. Chairman, that I said "if they are enforced." I stress that phrase because it has been my unhappy experience that the body created as the watchdog to enforce Federal election laws, the Federal Election Commission, is a sham. It has been weakened by a statutory system which discourages enforcement and demoralized by politics, lack of resources, and public perceptions of indifference to wrongdoing to the point it has become impotent.

Mr. Chairman, it gives me no pleasure at all to be here today talking about the failure of a system designed by this Congress to ensure fair electoral practices, but failure there has been, in my opinion, and discuss it I will, for unless we take action to drastically revise the system of enforcement of Federal election laws, any changes we make in the regulatory scheme, no matter how well considered, will have no salutary effect.

I am certainly not here to refight my campaign. I won and it would be easy to forget the past and to bask in victory. I bear no malice to my opponent. I believe that he was as much a victim of the system as was I.

This, however, is a matter which must be discussed. In the first place, I have too much respect for our system of equal justice under the law to ever believe the law can be violated with impunity. Equally as important, the violations I raise here today cannot be repeated. It is our obligation to the future not to repeat the mistakes of the past.

I intend today to speak from personal knowledge of gross violations of the Federal Election Code; of failure of the Federal Election Commission to act upon these violations; and indeed of actions by the Commission staff which amount to a tacit admission that they consider the job purely political, and which constitute direct evidence that the Commission and its staff have abandoned the zeal of the impartial prosecutor for political expediency.

I do not come to you, however, with no solution in mind. After I discuss the conduct of the Commission, I intend to briefly discuss new legislation I am offering as a companion to Boren-Byrd. This legislation, which I call the Fair Campaign Enforcement Act, is designed to strengthen penalties, reduce delay, and encourage enforcement of the laws now in effect, as well as those which I hope will be added through Boren-Byrd.

The statements I have made regarding FEC violations are not made lightly. In my recent campaign for the Senate, I came to realize that the existence of the Federal election laws had no deterrent effect whatsoever on the Washington, D.C. power brokers. It is, to say the least, frustrating to spend a year checking in advance with the Commission on nuances and interpretations of the law, which others are violating wholesale and with impunity.

I do not intend to go into extensive detail on those violations, although I will discuss what I consider to be the most serious instance. After the campaign, my counsel fully investigated and briefed me on the status of all the complaints that were pending in the election in which I was involved. What we learned disturbed me greatly. Suffice it to say that numerous complaints were filed, both by my attorney and by independent State Democratic Party functionaries, and that in all instances there has been no resolution of any such complaints.

The action taken by the FEC in regard to the first complaint filed, however, does demonstrate its real attitude toward enforcing the law. The first complaint was filed in March of last year by Richard Segerblom, a Nevada lawyer and Democratic State Party official. When no action had been taken on his complaint after six months, Mr. Segerblom sued the FEC in Federal court in the District of Columbia. That suit was voluntarily dismissed because the FEC was able to demonstrate that it had taken some minimal action to investigate the complaint. As to what the action was, I am not privy to.

What is important, however, is the fact that after the election, the FEC contacted Mr. Segerblom and asked him if he would be willing to dismiss his complaint because I had won the election. That the complaint had merit; that the FEC was supposed to be an entity prosecuting it; that they are sworn to uphold the law; did not enter into their analysis. Instead, they presumed that a complaint would only be filed for political motivations and that the

laws governing Federal elections were not worth enforcing for their own sake. Needless to say, Mr. Segerblom refused their request.

That the request was made at all, though, speaks volumes of the institutional immorality and the politicization of the Federal Election Commission. Any law enforcement entity which presumes that politics, rather than morality and the law, governs the decision to pursue a case is one which should not be permitted to continue to function. The Commission in my opinion is sick and I have introduced legislation to help make it well, both by toughening standards, and by providing for alternative enforcement where the Commission fails to speedily pursue violators.

Before I discuss that legislation, however, I would like to discuss in detail one series of events which I believe constitute an extraordinarily serious pattern of violations, and about which, to the best of my knowledge, neither the Commission nor the Department of Justice has done a thing. In this testimony, if I seem to be going into detail, it is because I want this matter laid on the public table once and for all and because I want it clearly and unequivocally brought to the attention of the proper authorities so that still another coverup cannot occur.

Accompanying my testimony is a copy of a complaint filed by Richard Segerblom with the FEC in January 1987. That complaint represents what I have been told is an extremely serious *prima facie* series of violations of the Election Code, mail fraud, wire fraud, conspiracy and racketeering laws. In essence, it demonstrates that checks between the value of \$10 and \$50 from 17 different states of this republic were reported by the Santini for Senate Committee and the Republican Senatorial Campaign Committee as conduited funds, properly, passed through the Republican Senatorial Campaign Committee to the Santini campaign, without any exercise of discretion or control by the RSCC on March 25, 1986. That was the day after Mr. Santini announced his candidacy, which was the first day he could have properly and legally solicited and obtained monies. A list of those names and addresses for exemplary purposes is attached to this testimony.

Basically, what the complaint says is that it is extremely doubtful that checks for those small sums were solicited and obtained by expensive and expeditious means in 17 states listed on page 3 of the complaint and passed on to the same campaign by the RSCC, without any exercise of control by the RSCC. Rather, it is extremely probable that the RSCC had already solicited these checks as general contributions and on the 25th they simply chose to designate those funds as contributions to Santini's committee. That they could properly do.

During the campaign, a newspaper telephoned a number of those donors. It reported that they had never heard of Mr. Santini. The individual contributor said they had never heard of him and did not know who he was.

What was illegal, and what the RSCC did, was to lie to the FEC about the discretion exercised over those funds. When they were reported as conduited funds by the RSCC and the Santini committee, it meant they applied only against the contribution limits of the individual donors and not those of the RSCC. So the RSCC and

the Santini committee apparently agreed to submit by mail false reports to the FEC, and indeed they submitted those reports.

The matter is easy enough to check. The donors and their addresses are listed in a computer printout provided by the RSCC attached to the first quarter FEC report submitted by the Santini campaign on April 15, 1986, to the FEC, and in the list attached to this testimony. All someone had to do, as the newspaper did, was look at the checks written by those individual donors and ask them if they made contributions to Mr. Santini. I am quite certain that those checks will have been written to some entity other than the Santini for Senate Committee.

If what I believe is true and what the newspaper reported is true, then the reports made by the Republican Senatorial Campaign Committee to the FEC were made in intentional violation of the reporting provisions of Title II. Such an agreement to violate the Federal Election Code, the use of the mail and the telephones in furtherance of that agreement, and the misuse of the committees for those purposes would constitute a series of crimes. What we are talking about are wire and mail fraud violations, conspiracy and racketeering by their treasurers and possibly other people who directed and controlled them. Such a conspiracy makes Watergate, I think, look like a kiddies' tea party.

What action has the FEC taken regarding these violations? To the best of my knowledge, none. What action has the Attorney General taken to investigate these potentially extremely serious criminal violations? To the best of my knowledge, none.

That is why I have proposed the Fair Campaign Enforcement Act. Boren-Byrd is important. The Federal Election Act as it stands is important. What we need is to enforce those laws.

I have proposed legislation to strengthen penalties, to mandate imposition of penalties, expedite enforcement, and to provide a speedy remedy to the individual wronged by an FEC violation.

I want to stress that I am not offering this testimony today from a sense of vindictiveness or ill will. I believe that the law is designed to cover everyone, and that if speedy and efficient enforcement is not provided, then the best statutory scheme in the world is worse than useless. It becomes not only an object of derision but an example of the impotence of the system. We cannot permit that situation to continue.

What party is in power today may not be in power tomorrow, and it applies to both political parties. Today, I am asking the Senate to support Boren-Byrd and the Fair Campaign Enforcement Act as a remedy to future violations. Frankly, I believe the base of integrity which is the core of our system is at stake. I sincerely hope that the authorities will not fail the people, the system or their oaths, to pursue corruption and violations of the law, no matter how high or how powerful the wrongdoer. I hope they will not shirk their duty, and I know this body will not permit them to do so, for that is our role in the system of government which has worked so well in the past and which it is our sworn duty to maintain.

Thank you very much.

[The prepared statement of Senator Reid follows:]

STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, I have reviewed a great deal of the testimony of the other witnesses, and rather than reiterating that which those from this body of far greater experience and wider knowledge have so eloquently and adequately discussed, I would prefer simply to concur in their conclusion regarding the necessity for Boren/Byrd. I do so with no great enthusiasm for the concept of Federal funding of elections, since it has been my experience that Federal funding is an easy way to avoid the real problems in the Federal election process.

In this instance, however, the system created by Senators Boren and Byrd is well reasoned, and represents about the only viable alternative for controlling the abuses with which the present system has been burdened the past several years. I would like to stress, that while those abuses do exist, many aspects of the present system contain great merit, and if enforced, when taken together with the additions of Boren/Byrd, will, I am convinced, ameliorate the current deplorable situation.

Notice, please, that I said "if they are enforced." I stress that phrase, because it has been my unhappy experience that the body created as the watchdog to enforce Federal election laws, the Federal Election Commission, is a sham. It has been weakened by a statutory system, which discourages enforcement, and demoralized by politicization, lack of resources, and public perceptions of indifference to wrongdoing to the point it has become impotent.

Mr. Chairman, it gives me no pleasure at all to be here today talking about the failure of a system designed by this Congress to ensure fair electoral practices. But failure there has been, and discuss it I will, for unless we take action to drastically revise the system of enforcement of Federal election laws, any changes we make in the regulatory scheme, no matter how well-considered, will have no salutary effect.

I am certainly not here to refight my campaign. I won, and it would be easy to forget the past and bask in victory. I bear no malice to my opponent. I believe he was as much a victim of the system as was I.

This, however, is a matter which must be discussed. In the first place, I have too much respect for our system of equal justice under law to ever believe the law can be violated with impunity. Equally as important, the violations I raise here today can not be repeated. It is our obligation to the future, not to repeat the mistakes of the past.

I intend today to speak from personal knowledge of gross violations of the Federal Election Code; of failure of the FEC to act upon those violations; and indeed, of actions by the Commission staff which amount to a tacit admission that they consider the job purely political, and which constitute direct evidence that the Commission and its staff have abandoned the zeal of the impartial prosecutor for political expediency.

I do not come to you, however, with no solution in mind. After I discuss the conduct of the Commission, I intend to briefly discuss new legislation I am offering as a companion to Boren/Byrd. This legislation, which I call the Fair Campaign Enforcement Act, is designed to strengthen penalties, reduce delay, and encourage enforcement of the laws now in effect, as well as those which I hope will be added through Boren/Byrd.

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The action taken by the FEC in regard to the first complaint filed, however, does demonstrate its real attitude towards enforcing the law. The first complaint was filed in March of last year by Richard Segerblom, a Nevada lawyer and State party official. When no action had been taken on his complaint after 6 months, Mr. Segerblom sued the FEC in Federal court in the District of Columbia. That suit was voluntarily dismissed because the FEC was able to demonstrate that it had taken some minimal action to investigate the complaint. As to what that action was I am not privy.

What is important, however, is the fact that after the election, the FEC contacted Mr. Segerblom through his attorney and asked him if he would be willing to dismiss his complaint because I had won the election. That the complaint had merit; that the FEC was supposed to be the entity prosecuting it; that they are sworn to uphold the law; did not enter into their analysis. Instead, they presumed that a complaint would only be filed for political motivations, and the laws governing Federal elections were not worth enforcing for their own sake. Needless to say, Mr. Segerblom refused their request.

That the request was made at all though, speaks volumes of the institutional immorality and politicization of the FEC. Any law enforcement entity which presumes that politics rather than morality and the law, governs the decision to pursue a case, is one which should not be permitted to continue to function. The Commission is sick, and I have introduced legislation to make it well, both by toughening standards, and by providing for alternative enforcement where the Commission fails to speedily pursue violators.

Before I discuss that legislation, however, I would like to discuss in detail one series of events which I believe constitute an extraordinarily serious pattern of violations, and about which, to the best of my knowledge, neither the Commission, nor the Department of Justice, has done a thing. In this testimony, if I seem to be going into extreme detail, it is because I want this matter laid on the public table once and for all, and because I want it clearly and unequivocally brought to the attention of the proper authorities so that still another coverup can't occur.

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What was illegal, and what the RSCC did, was to lie to the FEC about the discretion exercised over those funds. When they were reported as conduited funds by the RSCC and the Santini committee, it meant they applied only against the contribution limits of the individual donors, and not those of the RSCC. So, the RSCC and the Santini committee, apparently agreed to submit by mail false reports to the FEC, and indeed, they submitted those reports.

The matter is easy enough to check. The donors and their addresses are listed in a computer printout provided by the RSCC attached to the first quarter FEC report submitted by the Santini campaign on April 15, 1986, to the FEC, and in the list attached to this testimony. All someone had to do, as the newspaper did, was look at the checks written by those individual donors, and to ask them if they made contributions to Mr. Santini. I am quite certain that those checks will have been written to some entity other than the Santini for Senate Committee.

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Today, I am asking the Senate to support Boren/Byrd, and the Fair Campaign Enforcement Act as a remedy to future violations.

Frankly, I believe the base of integrity which is the core of our system is at stake. I sincerely hope that the authorities will not fail the people, the system or their solemn oaths, to pursue corruption and violations of the law no matter how high or how powerful the wrongdoer. I hope they will not shirk that duty, and I know this body will not permit them to do so. For that is our role in the system of government which has worked so well in the past, and which it is our sworn duty to maintain.

Thank you for your attention.

DONOR LIST

Col. Horace Freitag P.O.Box 2 Granite Falls, MN. 56241	\$15.00	Mr. George L. -less 321 W. Sixth St. Lancis, N.C. 28088	\$10.00
Mrs. Mary F. Wiggin 818-1 Continental Ct. Vandalia, Ohio 45377	\$15.00	Mrs. Joseph Williams 1001 So. Milwaukee Way Denver, Colo. 80209	\$15.00
Mr. Vallantine Van Ness 142 West 4th So. Logan, Utah 84321	\$50.00	Mr. Francis --oan 41 Elmfield St. Elmwood, Conn. 06110	\$10.00
Miss Muriel A. Glasson P.O.Box 20233 St. Petersburg, FL. 33742	\$10.00	Mrs. Sonia M. Megquiar 133 Ledgelawn Ave. Bar Harbour, ME. 04609	\$30.00
Mr. Robert L. Phillips P.O.Box 565 Crancock, VA. 23417	\$10.00	Mr. Leighton R. Taylor 10125 Willowcreek Cir. Sun City, AZ. 85373	\$30.00
Ms. Susan Phillips 40 Tupelo Ave. Napierville, Ill. 60540	\$10.00	Mr. William Wolf Wedgewood Gardens Apt. 141 Eatontown, N.J. 07727	\$10.00
Mr. Roland G. -rance 89 West Lake Circle Palm Springs, CA. 92262	\$15.00	Mr. Vina Bryce 1601 Larry Wackins El Paso, Texas 79936	\$15.00
Mrs. Bernice C. Peterson 10561 14th Ave. S.W. Seattle, WA. 30740	\$15.00	Mrs. Jara McBain 7731 Davis Drive St.Louis, MO. 63105	\$60.00
Col. John --ocs 113 Pl-t St. Greenville, PA. 16125	\$10.00		

GCC- 2442

RICHARD SEGERBLOM

ATTORNEY AT LAW

324 SOUTH THIRD STREET, SUITE 200

LAS VEGAS, NEVADA 89101

(702) 384-1044

MEMBER OF THE NEVADA CALIFORNIA & COLORADO BARS

MVR 2314

07 JAN 9 12:09

January 5, 1987

Charles N. Steele, Esq.
Federal Election Commission
999 East Street
Washington, D.C. 20463

Dear Mr. Steele:

I am writing this letter as an additional formal Complaint to the Federal Election Commission (hereinafter referred to as the Commission) regarding certain actions taken by various Committees and individuals discussed below. This Complaint is directed not just at Committees and their Treasurers; it is also specifically intended to act as a Complaint against individuals other than Committee Treasurers whom I believe have participated in actions which I believe constitute violations, inter alia of Federal Campaign laws which fall within your jurisdiction. Since I believe the actions I will discuss below also constitute possible violations of other laws outside the jurisdiction of the Commission, I am also directing copies of this Complaint to the United States Attorneys for the Districts of Columbia, and of Nevada. This Complaint is not a supplement to my prior Complaints.

In essence, this Complaint is directed at a series of transfers of funds from the Republican Senatorial Campaign Committee (hereinafter the RSCC) and/or, on information and belief, directly or indirectly through the RSCC from the Republican National Committee (hereinafter the RNC) to the Santini for Senate Committee (hereinafter the Santini Committee) commencing in March, 1986. Those transfers were, in part at least, reported to the Committee as donations from individuals for which the RSCC acted only as a proper "conduit."

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On information and belief, the funds represented by those transfers were obtained by the RSCC and/or the RNC from individuals in several States through solicitations directed through the United States Mail and through interstate wire and telephonic communications. Those funds were sent to the RSCC and/or the RNC through the United States Mail in envelopes provided by the RSCC and/or the RNC and were disbursed to the Santini Committee through the use of wire fund transfers, as well as through the use of the United States Mail. The Reports listing those transfers as "conducted funds" were transmitted to the Commission through the United States Mail.

It is my understanding that in order to act as a proper conduit the RSCC could not exercise direction or control over the choice of the intended recipient of the contribution, and that if such direction or control was exercised by the RSCC, the contribution would be considered to have been made both by the original contributor and by the RSCC, 11 CFR 110.6(d). I believe, however, that in spite of that requirement, the RSCC did obtain funds in excess of seven hundred thousand dollars (\$700,000.00) from individual contributors in several States, in the manner discussed above, and that the RSCC, rather than those individual contributors, in fact determined that the Santini Committee would be the recipient of those contributions.

Although numerous infusions of allegedly "conducted" funds to the Santini Committee from the RSCC took place during the period between March and October, 1986, the best example of the clear violation of the prohibition against exercise of direction or control by the RSCC is demonstrated in the first infusion of cash into the Santini Committee from the RSCC in March, 1986.

According to the Schedule A filed by the Santini Committee with its Form 3 Report of April 15, 1986, the Santini Committee received some nineteen thousand and twelve dollars (\$19,012.00) in conducted

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contributions from the RSCC on March 31, 1986. Neither the Santini Committee, nor the RSCC reported those contributions to the Committee as contributions counted directly against the contribution limits of the RSCC.

The timing of those contributions, as set forth in the April 15, 1986 Report, demonstrates that it would have been physically impossible for the allegedly conduited contributions to have been made to the Santini Committee without the exercise of direction or control by the RSCC.

As you are no doubt aware, James Santini did not file a Statement of Organization Form 1 for an exploratory Committee until February 20, 1986. That Exploratory Committee was formed to accept contributions "solely for the purpose of determining whether Mr. James D. Santini should become a candidate for the U.S. Senate in 1986." As you know, any such Exploratory Committee is prohibited by 2 U.S.C. Section _____ from receiving more than \$5,000.00 in contributions.

Mr. Santini formally announced his candidacy for the U.S. Senate on March 24, 1986. He did not, however, file a revised Form 1 for his Campaign Committee with the Commission until April ___, 1986, (that Form 1 was dated April 4, 1986). The computer print-out dated April 1, 1986, and attached to the Santini Committee's April 15, 1986 Report as an incorporated portion of its Form A, purports to list individual contributions received by the RSCC and directed by the contributors to the Santini Committee between March 25, and March 31, 1986.

The March 25, 1986, contributions listed in the print-out include, inter alia, a \$15.00 contribution from Minnesota, a \$15.00 contribution from Ohio, a \$50.00 contribution from Utah, a \$10.00 contribution from Florida, a \$10.00 contribution from Virginia, a \$10.00 contribution from Illinois, a \$15.00 contribution

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from California, a \$15.00 contribution from Washington, a \$10.00 contribution from Pennsylvania, a \$10.00 contribution from North Carolina, a \$15.00 contribution from Colorado, a \$10.00 contribution from Connecticut, a \$30.00 contribution from Maine, a \$30.00 contribution from Arizona, a \$10.00 contribution from New Jersey, a \$15.00 contribution from Texas, and a \$60.00 contribution from Missouri. Each of those contributions was, according to the print-out, received by the RSCC on March 25, 1986.

According to the Santini Committee's Form A, and the print-out, those contributions were conducted through the RSCC, and the RSCC did not exercise direction or control in the allocation of those funds to the Santini Committee. Mr. Santini announced his candidacy on the afternoon of March 24, 1986. Accordingly, for the RSCC to receive those funds by March 25th, it would have had to contact contributors in at least seventeen States by a very expeditious means, and those contributors would have had to wire or at least express mail those funds, in order for the RSCC to have received them by midnight on March 25, 1986.

It is difficult to believe that contributors of sums of \$60.00 or less in seventeen States would have resorted to such expensive means of transportation in order to deliver relatively small sums to the RSCC for later delivery to Mr. Santini.

Rather, I believe that the sums shown in the print-out represent contributions received by the RSCC from its normal direct mail fundraising procedures, and over which the RSCC exercised direction and control in directing those funds to the Santini Committee. I also believe, that it is possible some of those funds represent contributions solicited by the RNC and transferred from the RNC to the RSCC for the purpose of contributing those sums to the Santini Committee.

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More importantly, on information and belief, the RSCC, its Treasurer, and the members of the Committee, including its Chairman, as well as the Santini Committee, its Treasurer, and James D. Santini knew, directed, intended and agreed that the fund transfers above discussed would not be accurately reported to the Commission, and that the United States Mail, and interstate wire communications would be used in a continuing fashion for the purpose of violating reporting requirements and contribution limits imposed by Title 2 of the United States Code.

Those offenses against the United States continued in the additional allegedly conducted contributions reflected in later Reports filed by the Santini Committee with the Commission.

The actions of the various individuals and Committees discussed above constitute violations of 18 U.S. Code Section 1343 (wire fraud) and 18 U.S. Code Section 1341 (mail fraud) by making use of the United States Mail and of interstate wire communications, on the part of the Santini Committee to obtain money by false pretenses, and on the part of the other persons and entities named herein to assist the Santini Committee to obtain money by false pretenses, in violation of federal law, to wit, Title 2 of the United States Code, as well as aiding and abetting in violation of 18 U.S.C. Section 2(b).

The agreements and acts in furtherance of those agreements necessarily involved in the commission of the above discussed offenses by those individuals and entities constitute a violation of 18 U.S.C. Section 371 (criminal conspiracy).

The actions discussed above constitute "racketeering activity" pursuant to 18 U.S.C. Section 1961, and the pattern of activity in which the above discussed individuals caused the above discussed

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entities to engage over the course of several months constitutes the existance of a criminal organization engaged in a pattern of racketeering activity in violation of 18 U.S.C. Section 1961 et seq, and specifically, 18 U.S.C. Sections 1962(c) and (d), (RICO violations).

I believe that the information provided herein demonstrates a prima facie case of criminal activity, as well as a pattern of serious, continuing, and intentional violations of federal election laws.

Accordingly, I hereby request that you make inquiry regarding the above-stated violations in the following manner:

a) I request that you subpoena and depose the following individuals and entities:

- 1) James Santini
- 2) Robert L. Seale
- 3) J. Glen Sanford
- 4) Frank Fahrenkopf
- 5) Custodian of Records for:
 - i) Santini for Senate Campaign
 - ii) National Republican Senatorial Campaign Committee
 - iii) Republican National Committee
 - iv) Banks where the above entities maintain accounts
 - v) Persons or entities engaged in fund-raising for the above referenced organizations

In deposing those individuals and entities, I request that you make inquiry regarding all payments and communications, and documentation regarding such payments and communications relating to the fund raising and disbursement discussed in this Complaint.

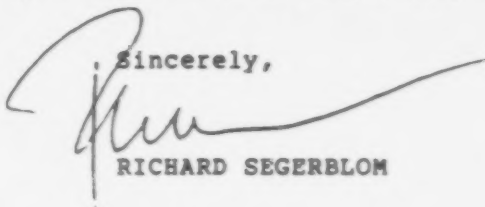
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b) I also request that you propound Requests for Production of Documents to the above named persons and entities who have been named as Defendants herein, seeking production of the above discussed documents.

I would appreciate it if you would pursue all available remedies to the fullest extent of the law.

If I may provide any further information or be of any assistance in your investigation, please do not hesitate to contact me. Would you be so kind as to send me a file stamped copy of this Complaint, after it has been filed.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Segerblom', with a long horizontal flourish extending to the right.

RICHARD SEGERBLOM

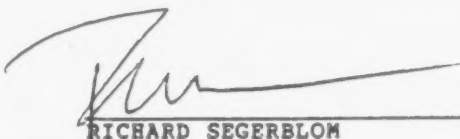
RS/jrk

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

RICHARD SEGERBLOM, being first duly sworn
deposes and states that:

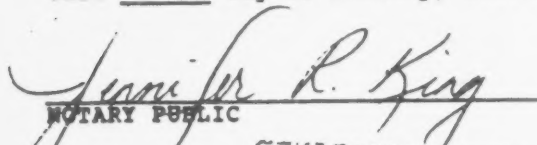
1. The above stated facts are made by him
of his own personal knowledge except for those matters
stated upon information and belief, which he well and
truly believes, and

2. That he is personally aware that the
above stated Complaint is made under penalty of perjury,
and subject to the provisions of Section 1001 of Title
18, United States Code.

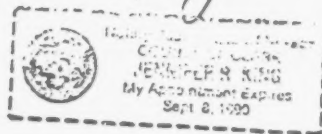


RICHARD SEGERBLOM

SUBSCRIBED and SWORN to before me
this 5 day of January, 1987.



NOTARY PUBLIC



The CHAIRMAN. Thank you very much, Senator. You have made your position clear and concise.

I have no questions, Senator.

The next and final witness will be Senator Graham, of Florida.

Bob, we are delighted to have you here. If you wish, your statement will be included in the record in full and you may summarize it. You may proceed.

TESTIMONY OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you, Senator. I appreciate that invitation and I appreciate the opportunity to review this with yourself and with Senator Stevens.

I would like to request that the full statement and a suggested draft of an amendment to S. 2, which is the subject of my statement, be accepted for the record.

The CHAIRMAN. Without objection.

Senator GRAHAM. Mr. Chairman, it is my purpose today not to talk about the full range of issues involved in S. 2 but, rather, to focus on the specific components of the consequence of the large amounts of funds available in current campaigns and that is the tendency to privatize what is intended to be inherently a public process, a political campaign.

The large amounts of money which are currently available to candidates have given to those candidates an option. It is an option to structure campaigns around carefully structured campaign advertising, minimize or avoid traditional campaigning and contact with the voters, to insulate the candidates from the give and take of public access, to narrow the range of campaign issues to a few which can be easily explained in 30-second television commercials, to refuse to participate in joint public appearances or other serious methods of public discourse, to rely on negative advertising, to create a sense of conflict and to control press coverage of the campaign, to allocate a disproportionate amount of time to the fund raising necessary to bankroll this limited but expensive agenda.

All of this has the effect of converting a publicly owned event into a privately managed, staged event. A campaign is a two-way dialogue between the candidate and the voters. In its best form, a candidate is attempting to present his or her ideas, personality and qualifications to the voters. But the voters are also educating the candidate about the issues which are important to them, the role which they see government playing in their lives, what they will expect from their public official.

The candidate who avoids appearing before civic groups, who ducks direct questions by the press, who never meets with, talks to or listens to constituents is not prepared for public office and does not deserve public office.

I am pleased to be a cosponsor of S. 2. I strongly support its intent to realistically curb campaign spending, and I agree with the statement made earlier by Senator Stevens that the fundamental evil is the enormous amounts of total money which are being expended in political campaigns.

I agree with Senators Boren and Byrd that we need to give campaigns back to the people, the voters. We need to shift the focus from raising and spending money to talking and listening and learning and decision-making.

Less money for paid advertising means less temptation to rely on negative advertising. The press looks for confrontation in a campaign as the principal means of highlighting the differences between candidates. If the only confrontation is the charge and countercharge in a series of campaign commercials, that will be what will be covered. The nature of the advertising not only sets the tone of the campaign, it becomes the campaign.

An analysis of the Florida Senate race last fall showed that between September 21st and October 20th, eleven of the seventeen stories in the State's largest newspaper, the Miami Herald, were about campaign ads and media consultants who had developed those campaign ads.

During that time, I set about a program of having an almost daily speech on an issue which I felt was important. These covered drug interdiction, health care for the elderly, trade relations with Latin America, Federal environmental responsibility. In the absence of any joint appearances by the Senate candidates, those singular statements received almost no attention or coverage.

The focus of the coverage was on the electronic dialogue, the TV ads. So I believe that we should go an extra step to ensure full discussion of the issues and sufficient exposure of candidates to public scrutiny and to each other. So I am proposing today and have submitted for the record as an addition to the Boren-Byrd bill an amendment which will require that any candidate receiving public financing must agree as a condition to engage in public debates.

My proposal would require at least two one-hour public debates of Senate candidates as a condition of accepting public campaign financing. If one candidate turns down the money to avoid the debate requirement, the time will be set aside for the other candidates for questions and answers in a public forum and any television station or other media which elected to cover that would be exempted from equal time requirements.

The FEC would regulate and supervise the debates and act as an arbitrator of any disputes. In 1978, when I ran for Governor of Florida, I participated in more than twenty debates and public discussions with the other candidates. Last year, my opponent and I received over ten invitations for major debates. There was one. That is not just a Florida story.

The National Association of Broadcasters surveyed television stations across the Nation after the 1986 campaign: 56 percent of the country's television stations offered free time for political debates, but nearly half of them did not air debates because one or more major party candidates declined to participate.

This is symptomatic of the distressing trend of privatizing campaigns. Debates generate voter interest and force candidates to examine the issues chosen by the reporters and the public, not by marketing strategists. We can adapt modern campaigning to modern technology without losing any of the vitality and accessibility which have characterized campaigning in less sophisticated times.

If the Federal Election Commission is sensitive to State election laws and political traditions in setting out flexible guidelines for debates, we could end up with 50 laboratories for political debate in an era of television. We can restore the old excitement and sense of immediacy to a process which can no longer rely on the whistle stop and the local Main Street parade to reach voters.

In my experience, and I am certain it is yours, debates are significant in voters' decision-making. Debate is also invaluable as a crucible for forging stronger, better prepared candidates and future public office-holders. We can infuse national Senate races with a fresh openness and energy by requiring public debates as a condition of public campaign financing. We can safeguard our political traditions and incorporate today's technology in the process at the same time.

We can return to the educational function of campaigns, better prepared candidates and better served voters. With S. 2 and a public debate requirement, we can revitalize and reemphasize the public nature of the American political campaign.

Thank you, Mr. Chairman.

[The prepared statement of Senator Graham follows:]

STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Of the many legitimate concerns about the excessive amount of money being spent on political campaigns—one which concerns me deeply is the tendency of all that money to encourage what I call the "privatization" of our traditional, public campaign process.

The options conferred by huge campaign war chests are:

To structure campaigns around carefully crafted television advertising;

To minimize or avoid traditional campaigning and contact with the voters;

To insulate the candidate from the open give and take of press access;

To narrow the range of campaign issues to the few which can easily be explained in 30-second TV commercials;

To refuse joint public appearances with other serious candidates for the same office;

To rely on "negative" advertising to create a sense of conflict and control press coverage of the campaign; and

To allocate a disproportionate amount of time to the fundraising necessary to bankroll that limited but expensive agenda.

All this converts what should be a publicly owned event into a privately managed, staged effort.

A campaign is a two-way dialogue between the candidate and the voters. The candidate presents his or her ideas, personality and qualifications to the voters.

The voters educate the candidate about the issues which are important to them, the role they see government playing in their lives, and what they expect from a public official.

A candidate who avoids appearing before civic groups, who ducks direct questioning by the press, who never meets with, talks to, listens to constituents—isn't prepared for public office—and doesn't deserve it.

I am pleased to be a co-sponsor of S. 2—and I strongly support its intent to realistically curb campaign spending. All that money pays for the professional consultants, the advanced technological options, the purchased advertising which—when used irresponsibly—threatens the proud and open tradition of the American political campaign.

I agree with Senators Boren and Byrd. We need to give campaigns back to the people they belong to—the voters. We need to shift the focus from raising and spending money to talking and listening and learning and decision-making.

Less money for paid advertising means less temptation to rely on "negative" advertising. The press looks for confrontation in a campaign as the principal means of highlighting the differences between candidates.

If the only confrontation is charge and countercharge in a series of carefully crafted campaign commercials, that's what gets covered. The nature of the advertising not only sets the tone of the campaign—it becomes the campaign.

An analysis of the Florida Senate race last fall showed that between September 21 and October 20, 11 of the 17 stories in the state's largest newspaper, the Miami Herald, were about the campaign ads and the media consultants.

During that time I gave daily speeches on issues important to Floridians: drug interdiction, health care for the elderly, trade relations with Latin America, and federal environmental responsibilities.

In the absence of any joint appearances by Senate candidates, the focus of the coverage was on the electronic dialogue—the TV ads.

So I believe we should go an extra step to ensure full discussion of the issues and sufficient exposure of candidates to public scrutiny—and to each other.

I am today proposing an addition to the Boren-Byrd bill which will require that any candidate receiving public financing must engage in public debate.

My proposal requires at least two one-hour public debates of Senate candidates as a condition of accepting public campaign financing. If one candidate turns down the money to avoid the debate requirement, the time will be set aside for the other candidates for questions and answers in a public forum.

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That isn't just a Florida story. The National Association of Broadcasters surveyed TV stations across the nation after the 1986 campaign. 56% of the country's television stations offered free time for political debates—but nearly half of them did not air debates because one or more major-party candidates declined to participate.

This is symptomatic of the distressing trend of "privatizing" campaigns. Debates generate voter interest and force candidates to examine the issues chosen by the reporters and the public—not by marketing strategists.

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If the Federal Elections Commission is sensitive to state election laws and political traditions in setting out flexible guidelines for debate—we could end up with 50 laboratories for political debate in an era of television.

We can restore the old excitement and sense of immediacy to a process which can no longer rely on the whistle stop and the local Main Street parade to reach voters.

It is my experience—as I'm sure it is yours—that debates are significant in voters' decision making.

The debate is also invaluable as a crucible for forging stronger, better prepared candidates.

We can infuse national Senate races with a fresh openness and energy by requiring public debate as a condition of public campaign financing. We can safeguard our political traditions and incorporate today's technology into the process at the same time.

We can return to the educational function of campaigns, better prepare candidates, better serve voters.

With Senate Bill 2 and with a public debate requirement—we can revitalize and re-emphasize the public nature of the American political campaign.

The CHAIRMAN. Thank you very much, Senator. I am interested in your amendment to S. 2 and I assure you that this Committee will give it serious consideration. We look forward to working with you.

I have no questions of the Senator. Senator Stevens, do you have any questions?

Senator STEVENS. I am toying with some amendments that would provide limitations on expenditures and make public money available only if a candidate would not agree to those limitations. In any event, the premise that if people do get money, they ought to agree to debate is a good one and I have no problem with that. I

just do not think they ought to get public money if we can find a system to limit expenditures of private money.

Senator GRAHAM. I agree, Senator, with your premise that the fundamental problem is the enormous amounts of money and all of the consequences such as the capacity to privatize the campaign that that allows. I share your distress in the Supreme Court opinion which rendered previous congressional efforts and our State efforts to impose limitations unconstitutional.

Our State last year adopted a concept of public financing for our State-wide elections, such as Governor, beginning in 1990, out of the sense that that was the only means available to limit campaign expenditures. Our goal should be to return political campaigns to the people and assure that political campaigns fill their joint functions of educating the public as to the candidates and educating the candidates as to the public they will serve.

The CHAIRMAN. I am probably older than most here, but one of the greatest experiences of my life was seeing Alben Barkley and Happy Chandler in the gazebo at Chautauqua Park debating the issues in 1936. Somebody asked Barkley how he could keep his voice. He said he gargled with salt water.

There is a lot to what you have said today and we value your experience as a Governor and now as a Senator. Thank you very much for your testimony.

Senator GRAHAM. Thank you.

The CHAIRMAN. I would like to announce that because several Senators were unable to attend this morning, we are going to leave the hearing record open so their statements may be included in the record.

This hearing is recessed until the next hearing date is announced. Thank you.

[Additional material submitted for the record follows:]

STATEMENT OF HON. JOHN C. STENNIS, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Mr. Chairman, I appreciate having this opportunity to appear before our committee on this very important matter. I commend you for holding these hearings and getting into this question of campaign finance reform. I feel it is absolutely essential that we do something about the enormous sums of money—much of it from outside, special interest groups—that are now used in Federal campaigns.

I was shocked when I learned that successful Senate candidates last year spent an average of over \$3 million in winning election. At the same time, spending by these political action committees reached roughly \$140 million. This is an increase of roughly 25 percent over the level of PAC spending in 1984. These figures are almost unbelievable.

To a large degree, the presence of this outside money from political action committees moves the election farther and farther away from the people. It just seems to me, Mr. Chairman, that we are allowing outside special interest money to have a bigger role in determining our elections than do the people in the State itself.

This is simply not what the drafters of our Constitution had in mind. The Constitution, under which we have operated successfully as a nation for almost 200 years, points out with great clarity and emphasis that the power in our system of government was to rest with the people. The power to impose taxes and the power to declare war are vested in the hands of the people, through their elected representatives.

The Constitution begins in Article I with the legislative power, which is vested in a Congress. And one branch of that Congress is the House of Representatives, where the Members are to be "chosen every second year by the people of the several states." Later, through the 17th amendment, the selection of Senators was also put directly in the hands of the people.

My point, Mr. Chairman, is that under our system of government it is the people of the respective States and districts who select their own representatives. But with all this outside money flowing into Federal campaigns, the people have less and less to do with the election of their representatives. At the very least, they certainly feel that they are playing a lesser role in the process. They see these vast sums of money that are coming in from outside sources and wonder if their own small contribution really makes any difference.

Candidates now spend more and more time raising money from people outside of their States, and that inevitably reduces the time they have for their own constituents. Indeed, fundraising tends to become the main driving force for elected officials. It becomes almost all-consuming. And in the process, the needs of the people may get lost.

Now I am not being critical of any particular Senator for accepting money or spending these sums. Indeed, under our current laws, it is very difficult for any Senate candidate to refuse to accept money from these political action committees. Unless he accepts PAC contributions, he is almost certain to find himself swamped and outspent by an opponent who does not share his reluctance to accept these contributions. This fact simply underscores the need to make changes in our system.

I felt we made good progress in working on this issue last year. The Senator from Oklahoma, Mr. Boren, had a very good bill that I was pleased to cosponsor. His bill was a good start in the right direction. It imposed limits on the amount of money that Federal candidates could receive from political action committees, and it reduced the amount that each PAC could contribute to an individual candidate.

I felt this bill would have made an improvement in our system of financing campaigns, and I regret that we were not able to get it enacted last year.

By getting off to an early start this year, Mr. Chairman, I think we can see a bill all the way through. We should build on last year's measure, but I think we should also go a little further.

Even if we impose some new limits on the amount that outside groups can contribute to candidates, we still have not solved the problem of the sheer costs of campaigning these days. I have been willing to support restrictions on the financing of Federal elections, but the Courts have raised constitutional objections to some of these approaches.

Reluctantly, then, I have come to the conclusion that we must turn to some form of limited public financing if we are ever going to get this situation under control. Public financing will help us by imposing limits on total campaign spending and by reducing the importance of money from special interest groups.

This is a new position for me. In the past I have opposed any public financing of congressional campaigns. But I just do not think we have any other alternative. If we do not act to reform our system of financing campaigns, we will soon find ourselves with a system in which the people have very little say about who their representatives are.

It is important, though, to make sure that a system of public financing is designed only for serious candidates. We must require a candidate to demonstrate that he has a broad base of local support before he becomes eligible for funds from the Federal Treasury.

Once again, Mr. Chairman, I am pleased that your Committee is giving this matter such thorough attention. I believe you can succeed in putting together a bill that will restore to the people their primary role in determining who their elected representatives are. And that will add new meaning to the celebration of the 200th anniversary of our Constitution.

STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify before the Rules Committee on legislation to amend the Federal Election Campaign Act and specifically, S. 2, the Senatorial Election Campaign Act of 1987. The issue of campaign finance reform is of central concern to me, and I am pleased as a cosponsor of S. 2 to present my views for the Committee's consideration.

The escalation in campaign spending is altering the nature of Senate campaigns and our political process itself. These changes are not going unnoticed. There is a pervasive sense of discontent in Congress and across the country today with the current campaign finance system. The congressional campaign finance system is in need of repair.

Most members of the Senate, I suspect, are unhappy with the present campaign financing system. Yet we use it because it is the only way to raise the funds necessary to wage an effective campaign. This legislation would provide an alternative that I am convinced most members of the Senate and their opponents would prefer.

S. 2 will help bring about several needed changes. It will not only provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, but will also limit contributions by political action committees. This is not to say that S. 2 is the final word on campaign finance reform. Rather, it is a good first step and a starting point.

S. 2 would establish a voluntary system of campaign spending limits for Senate general elections linked to partial public financing. To be eligible for this financing, a candidate would first have to raise contributions from individuals which, in the aggregate, amount to \$250,000 or 20 percent of the established spending limit, whichever is less. This is a key provision, in that private, grassroots contributions would not be displaced by public funds. In fact, individuals making small contributions would be encouraged to participate as candidates seek to meet threshold requirements. The focus here will be on the individual contributor.

Limiting campaign spending is the central theme of this legislation. A participating candidate could spend in the general election no more than a total of \$600,000 plus 25 cents multiplied by the voting age population of the candidate's state. In addition, a participating candidate and his or her immediate family could contribute no more than \$20,000 in personal funds to the campaign.

By electing to participate in this system, a candidate of a major party who has met the necessary qualifications would be eligible for public funds equal to the difference between the threshold amount and the campaign spending limit for the state. The implementation of this system will make elective office a realistic ambition for individuals who lack the personal wealth or independent resources to wage a competitive campaign. Because of the Supreme Court's 1976 decision in *Buckley v. Valeo*, we cannot impose mandatory limits on campaign spending, but we can provide a voluntary system for public financing and spending akin to the successful system of public financing for Presidential campaigns.

This legislation is intended to put the election process back into the hands of the people. Under S. 2, all candidates would be subject to an overall limit on political action committee contributions. In addition, the individual political action committee contribution limit would be lowered from \$5,000 to \$3,000. Finally, this legislation would close the bundling loophole whereby political committees gather contributions to a candidate from their members and turn them over to the candidate without counting the contributions against the statutory limits on what a political committee can give to a federal candidate.

By establishing a voluntary system of campaign spending limits and by placing a limit on political action committee contributions, S. 2 would take a major first step forward in addressing some of the most serious problems which confront our electoral process.

S. 2 represents a definitive reply to those who call for election campaign reform. The time to move forward has arrived. We have before us a real opportunity to take action and reform our campaign financing system.

I urge the committee to act favorably on this important legislation.

STATEMENT OF HON. DANIEL P. MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK

Mr. Chairman, our elected form of government is besieged by a crisis, a crisis that has nothing to do with Iran, the contras, or the National Security Council. I speak of the shameful cost of elections in America. Leadership positions are rapidly becoming bastions of the wealthy, because the process by which we elect our representatives has become reduced to one common denominator: money.

When this committee's previous Chairman, Senator Mathias, began hearings on campaign finance reform in November, 1985, he observed that "every Representative and Senator elected in November 1986 would take office under a shadow—a long shadow that is cast by the powerful and growing influence of private campaign contributions on our political system."

With his usual eloquence, Senator Mathias was right on the mark. And you should be commended, Mr. Chairman, for making Senate campaign finance reform a priority for this committee.

A few statistics illustrate why so many are concerned about the growing influence of money in American campaigns.

It is no longer uncommon for Senate candidates to spend between \$5 and \$10 million, and even beyond. Consider the \$26 million North Carolina Senate race in 1984. More recently, Senate candidates in the 1986 California race spent approximately \$23 million combined.

In 1974, the average amount spent by Senate candidates was \$437,482. Ten years later, this average exceeded \$2 million, with winning candidates spending over \$3 million.

It is estimated that the combined cost of Senate races in 1986 was \$182 million, a staggering increase from the \$28.8 million spent in 1974.

The role of independent expenditures has increased dramatically over the years. In 1978, \$168,000 was spent in independent expenditures in Senate races; by 1984, that figure exceeded \$4.6 million. For all Federal races combined that year, including Presidential, independent expenditures passed the \$23 million mark.

The influence of political action committees also continues to rise. In the 1984 elections, approximately 30 percent of receipts in House and Senate elections were from PACs; up from 13.7 percent in 1972. It is estimated that PACs contributed \$140 million to congressional candidates in the 1986 election; a significant increase from the \$8.5 million contributed in 1972.

Why do I characterize this ever growing influence of money as a "crisis for an elected form of government?"

First, money rather than qualifications is all too often the primary consideration when a run for federal office is contemplated. Today, few can afford the undertaking. Whether or not this phenomenon is healthy for a representative government, I leave for others to decide. However, I do know that many qualified individuals avoid the pursuit of public office because of the need to ask for money.

Even for those who are elected to office, fund-raising must begin immediately for the next election—a preoccupation which infringes upon the time required to carry out the duties attached to an elected office.

Second, the influence of money in federal elections undermines the integrity of the political process. The perception that large donors, particularly political action committees, wield more influence than constituents or small donors damages the public's confidence in our government.

The purpose of the bill I introduced on the first day of the 100th Congress, the Senate Campaign Finance Act of 1987, is to reverse this trend whereby only wealthy candidates (or candidates with large PAC benefactors) have the chance to win a Senate race. My bill, S. 50, addresses the prohibitive cost of running for the Senate and the excessive influence of PAC's in relation to that of individuals.

I propose that we provide public funding for Senate campaigns, while at the same time limiting the amount that can be spent for such campaigns. In short, under S. 50 participating candidates would receive a dollar in public funding for each dollar of privately raised funds, up to a maximum based on the voting age population of that state.

I wish to make four points about this proposal.

First, I differ with some of my colleagues on the question of full public funding. I think it not unreasonable that we expect a candidate to demonstrate some viability by raising some funds on his or her own.

Second, while we should expect a candidate to raise some funds, we do need to curtail the influence of PACs. Under S. 50, the maximum political action committee contribution would be reduced to \$3,000 from \$5,000, while the ability of individuals to participate in the process would be increased by raising the individual limit to \$2,000 from \$1,000.

Third, the bill provides a strong incentive for candidates to participate in public financing: Participating candidates will receive full public funding over the formula maximum amount to the extent that their non-participating opponent spends in excess of the formula limit.

Fourth, by matching private contributions dollar for dollar, public funding for Senate campaigns can be financed from existing collections. Depending on which states were holding elections, it is estimated that the cost of funding Senate elections under S. 50 would be approximately \$35-45 million. This means the program could be financed with surplus funds collected from the existing one dollar check-off and currently deposited in the Presidential Election Fund.

Finally, I would note that S. 50 also addresses the problem of independent expenditures in an effective manner. Any person making independent expenditures will be required to report such activity to the Federal Election Commission and to each candidate in the election. If independent expenditures in excess of \$2,000 are made to oppose a candidate receiving public financing, or on behalf of a candidate who is

not, the candidate receiving public funding is entitled to receive additional public funds in the amount of the independent expenditures.

S. 50 is a start, and I believe a good one. The integrity of our electoral process is at stake; we are compelled to act. Candidates should not be elected because of their money, but by their qualifications, convictions and ability.

STATEMENT OF HON. NANCY L. KASSEBAUM, A U.S. SENATOR FROM THE STATE OF KANSAS

Mr. Chairman, the interest generated by this issue is appropriately demonstrated by the number of senators who have appeared before you today. Campaign finance reform not only affects each of us as elected officials, but also has become a most important issue for each citizen.

No decision is more important to our citizens than electing the person who will represent their views in Congress. Elections are the heart of the democratic process and each and every American should be assured the opportunity to cast an informed ballot.

Unfortunately, our current system has not only failed to inform, it has also failed to encourage voter participation. The influence of special interest money, the ever-expanding campaign period, and the enormous amount of money spent to gain public office has turned off the American voter.

I have followed and participated in this debate for many years. I supported strongly the legislation passed by the Senate in the last Congress limiting the contributions of political action committees [PAC's] to congressional candidates, strengthening the roles of the national political parties, and clarifying the proper role of independent expenditures.

These are modest steps, but they advance the process toward what I believe should be our goals. First, reforms should address the dramatic and destabilizing increase in the amount of money necessary for a competitive campaign. Until the amount of money is maintained at a reasonable level, the public will understandably wonder why its participation is useful. Second, reforms should be simple and straightforward. We do not need more confusion in campaign finance law and the average voter should justifiably revolt if the system becomes any more puzzling. Third, reforms should enhance the role of the individual constituent in the election process. Kansans should fund my campaign to the largest extent possible. Finally, reforms should carefully avoid unintended consequences. Any action taken will alter the political landscape and will have different effects in different locales. We cannot blindly ignore these impacts.

The chosen vehicle for the campaign reform effort in the Senate this year is S. 2. I applaud the efforts of Senators Boren and Byrd as they attempt to address the problems in campaign financing. However, I have long been reluctant to endorse public financing of congressional campaigns, and I am not yet convinced that any system of public financing can be developed which meets my goals outlined above.

I would offer the following comments regarding S. 2 as introduced. First, it does not deal with the first and often most important step in the election process—the primary. As one who survived a nine-way primary in 1978, I am well aware of the intensity of the primary process. In many states and districts, the primary determines, for all intents and purposes, the general election victor. Public funding for only the general election threatens to concentrate our existing problems in the primary season.

Second, I am sympathetic to the argument that any national funding formula will necessarily discriminate against certain states, certain districts, or certain media markets. Typically, proposed formulae have had the effect of limiting spending in the states with smaller populations without providing effective ceilings in more populous states. No formula can take into account regional differences or other unique characteristics of our 435 House districts and 50 states.

Third, the more complicated the campaign financing system (whether it includes public funding or not), the harder it is to administer and to explain to the voting public. Voter cynicism stems from many reasons, but we will not overcome it until and unless we devise a system which underscores the importance of their participation in a simple and direct way.

Mr. Chairman, I know from being on the "sponsoring" side of a legislative proposal how easy it is to take pot shots at the proposed plan. I want to work toward a real solution to campaign finance reform, and I want to outline what I believe may provide a realistic package.

We need to limit the impact of PAC contributions. Last year's legislation is a good place to start, although my information indicates a \$3,000 limit on PAC contributions would only affect 3 percent of total PAC giving. Limits on the overall amount of PAC contributions would be helpful—not a solution, but helpful.

Independent expenditures should be more tightly defined. We cannot still these outside voices, no matter how annoying or distracting, without doing serious damage to the political expression objectives of the first amendment. We can, however, make clear that a particular expenditure is, in fact, independent, and we can ensure the disclosure informs the voter of that fact.

I still believe we can encourage the candidates to debate the issues personally by requiring that they appear in their own radio and television commercials. As every new election seems to confirm, the line between simple and simple-minded is a thin one—and very easy to cross in a thirty-second TV spot. Let us ensure that the voter can evaluate the candidate directly, not through surrogates.

We should consider ways to improve enthusiasm on election day. A uniform poll-closing time could alleviate the discouraging impact east coast returns can have on west coast voters. We should also consider either making election day a federal holiday or changing elections to Saturday or Sunday. If we can facilitate voter access to the polls, we should do so.

Unless some magnificent compromise is out there which I have missed, the package of reforms I have described may be the best way to start toward the goals I outlined earlier. The package recognizes the constitutional limits on addressing independent expenditures as well as the need for a common-sense approach. By requiring candidates to campaign personally in the electronic media and limiting PAC contributions, we can force candidates to speak directly with their constituents when seeking votes and contributions. By facilitating the voting process we can encourage citizens to cast their ballot. This is what was intended by the Founding Fathers.

Mr. Chairman, your task is challenging. I hope my thoughts today can help the committee as it tries to grasp the elusive goal of real campaign reform.

STATEMENT OF HON. JOHN KERRY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator Ford and distinguished members of the committee, in 1974, it had become clear to a majority of the Senate and House that campaign finance needed to be regulated—that cash was not the right commodity for use in elections, that campaign contributions needed to be recorded and disclosed, and that the amounts of contributions from individuals and from institutions needed to be limited.

We should not minimize the importance of those reforms, but today I think there is a consensus that further reform is needed, that the 1974 law left crucial issues unresolved. And perhaps the most important of all of those issues is the failure of the 1974 law to limit overall campaign spending.

Today, as more and more members of the public have become disillusioned with the process, as campaign costs continue to surge, in the words of Majority Leader Robert Byrd, Senators are becoming "part-time legislators and full-time fundraisers," even as public participation in the campaign process reaches a historic low, and public trust in the process by which we are elected continues to diminish.

Thirteen years later, it is clear that the reforms of 1974 themselves need to be reformed. Too many have come to feel that, to quote Washington Post writer Thomas B. Edsall, "the political spenders have ground the regulators into the dust, capitalizing on loopholes, court decisions and what has come to be known as the 'law of unanticipated consequences' to reshape the law in favor of whomever has the money."

As Richard Reeves has written, "the campaign reforms have solved one set of problems by creating another one. Citizens and their money—are being driven out of the process," and in the words of political writer Elizabeth Drew, "we have allowed the basic idea of our democratic process—representative government—to slip away" through the role that money is playing in politics.

All of us know from personal experience that campaigns cost too much, that candidates spend too much time fundraising, and that the balance which the 1974 law tried to create between individuals and institutions has shifted. We have seen too many campaigns turn on the use of expensive and unfair negative advertising, and with bundling and conduiting by special interests, too much reliance on litmus tests for candidates, with the result that the public believes public policy is not necessarily addressed.

The lack of limits on spending has had many unfortunate consequences. As my friend and colleague Senator George Mitchell has said, "campaigns last too long and cost too much. Fund raising is time-consuming and absorbs the personal attention of candidates, so candidates focus on the most efficient means of fundraising." That means that candidates focus on the most efficient means of fundraising, which means PACs, which a decade ago numbered 600 and now number over 4,000. The result is that the balance that once existed is gone. To quote Senator Mitchell, "it is not surprising that ordinary people feel that the proliferation of PAC's and the amounts they can donate overwhelm the role of smaller individual contributions."

We need not only to cap campaign spending, but to restore the balance to increase participation in the process by individuals. We need to curb the process of bundling and conduiting which clearly violate the intent of current law. We need to respond to the problem of independent expenditures, which if left untouched would create a practically unlimited loophole in any spending limits we enact. The Boren and Mitchell reform bills that have already been introduced contain many of the elements necessary to accomplish these things. And among the provisions that both of them have this year is one which I consider an essential in order to provide the kinds of reforms I have talked about. And that is creating a public funding mechanism for general elections.

When I ran for the Senate, even as I personally experienced the treadmill of fundraising in the midst of a tough campaign, I made a personal decision not to accept political action money, and I have continued not to accept political action money for my Senate committee. I also made a commitment to seek campaign finance reform, and began to press for public financing as an alternative to the current system.

Last year, I filed legislation which paid for public financing for general elections through the elimination of the deduction for political contributions then contained in the tax code. In filing such legislation, I was following in the footsteps of one of my predecessors in this Senate seat, Henry Cabot Lodge, Jr., who suggested that "All this breeding of suspicion and cynicism would disappear, I believe, overnight if the primary cause of the evil were obliterated at its root" by public financing. Lodge's championship of public financing for campaigns itself had predecessors going back to Teddy Roosevelt who in 1907 called public finance "a substantial improvement in our system of conducting a campaign."

Public financing would replace the current system of too heavy dependence on institutional money which in turn would create a legal framework for a better mix, consisting of public funds, institutional funds, and funds from private individuals.

Public financing would create an appropriate constitutional basis for specific spending limits to stop the unconscionable increases in campaign spending. Such limits would for the first time put all serious candidates on an equal and fair footing in the general election, preventing soaring campaign costs from favoring persons of personal wealth over those without such wealth, and insuring that candidates have equal access in getting their message before the public.

Campaign reform legislation using public financing would, consistent with the Boren and Mitchell approaches, reduce reliance on PAC contributions through a PAC funding cap, so as to create a balance between individuals, public financing and institutional funding to deal with the perception problem created by too much reliance on political action committees by candidates. Bundling and conduiting should also be restricted to prevent any special interest from creating a mechanism by which it channels the flow of funds from any source to circumvent these restrictions.

Our job now is to create a consensus on behalf of campaign finance reform in a total package to deal with the unintended consequences of the 1974 reforms. If we do the job well, the result will be not merely a more fair and less painful process of campaign finance for each of us here, but a much-needed restoration of public trust.

STATEMENT OF HON. TERRY SANFORD, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

North Carolina is known for many things: a highly competitive business climate, warm and welcoming people, beautiful beaches and mountains, great universities, and the world's best basketball.

But there is one distinction that we're not so proud of: In 1984, North Carolina suffered through what was at the time the most expensive Senate campaign in our Nation's history. Together, the two candidates spent nearly \$22 million—and that doesn't include independent expenditures on behalf of the candidates. This election convinced many North Carolinians of the need for campaign finance reform.

I am proud to be a cosponsor of Senator Boren's campaign finance reform bill. It is a good start toward curbing the spiraling cost of running for Congress. Specifically, it addresses two of the biggest problems: it seeks to curb overall campaign spending through voluntary spending limits, and it seeks to rein in the growing influence of political action committees by capping PAC contributions.

This trend of rising costs of campaigns and the growing influence of PACs hurts our electoral process in two important ways. First, it discourages good people from running for office. A potential candidate no longer asks himself or herself, "What can I offer my country? How can I make a difference?" Or "Is this the best way to put my talents to work?" Instead, he or she must ask, "How will I ever raise the millions of dollars it takes to be a serious candidate?"

Second, the growing importance of money in campaigns has damaged voter confidence in elections. Right or wrong, many voters have the impression that "money talks" or that a seat in the Senate is up for sale. We need to reform campaign financing and restore voter confidence in elections.

When talking about what's wrong in our election laws, it serves no purpose to point fingers. It doesn't matter who started the bidding wars or who has profited the most. Virtually all of us have taken PAC money, and most of us went out and asked for it. We were faced with the realities of campaigns, and we ran competitive races.

But we can come up with a better system, one that removes the pressure to raise ever bigger campaign chests, and one that gives a bigger role to individual voters and contributors.

One of the most important reforms we can make would be to limit the growth of independent expenditures on behalf of candidates. There are two dangers in these independent campaigns. First, since the candidate is not held accountable for their content, there is an increased danger that extreme or irresponsible claims will be aired. The candidate may distance himself or herself from those claims, but they stick. The damage is done, while the candidate's hands stay clean. Second, since independent expenditures are not subject to any spending limits, there is the very real danger that moneyed interests can dominate a campaign, dwarfing the efforts and contributions of individuals.

S. 2 includes two important provisions to help control independent expenditures. First, it seeks to make sure the expenditures are, in fact, independent. To do this, it specifically prohibits coordination between the independent group and the candidate or the candidate's political party and consultants. Second, it lets the public know what interests are being represented in independent advertising. On any political advertising financed by an independent expenditure, it requires a clear disclosure of who paid for the ad, as well as a reminder that such advertising is not subject to any spending limits.

Laws permitting unlimited independent expenditures are designed to permit unfettered political expression—a goal that I share. But unfettered expression and irresponsible expression are not the same thing. I believe we can do a better job of fitting independent campaigns into our election system, without endangering anybody's freedom of speech. I hope that as this committee examines this issue, you will take testimony from some of the groups who have conducted extensive independent campaigns. Their testimony can help us gauge their interests and the role they have played in our electoral process. This knowledge can help us tailor our election laws to protect both the interests of the independent groups and the interests of individual voters.

In closing, I want to congratulate Senator Boren and this committee on your contribution to making our election system fairer, more open and less vulnerable to undue special interests. Reforming our campaign finance laws will go far toward restoring voter confidence and interest in elections.

[Whereupon, at 12 o'clock noon, the committee was adjourned.]

SENATE CAMPAIGN FINANCE PROPOSALS OF 1987

WEDNESDAY, APRIL 22, 1987

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 9:47 a.m. in room SR-301, Russell Senate Office Building, Hon. Wendell H. Ford (chairman) presiding.

Present: Senators Gore, Adams, Stevens and Warner.

Staff Present: James O. King, staff director; William McW. Cochran, senior advisor; Gerald W. Siegel, chief counsel, Gail S. Martin, chief clerk; Wayne A. Schley, minority staff director; William B. Canfield III, minority chief counsel; John K. Swearingen, director, technical services; Carole J. Blessington, assistant chief clerk; John L. Sousa, elections counsel; Constance H. Friedman, staff assistant; Denise H. Froehlich, professional staff member; Byron F. Hoover, staff assistant; and John R. Moremen, staff assistant.

The CHAIRMAN. Ladies and gentlemen, may we have your attention. If there are any seats that some of you standing can take, we would appreciate that. We are going to have to start limiting people coming into the room. This is going to be an interesting day.

This is the third hearing of the Committee on Rules and Administration on Senate campaign finance bills. During the first two, we heard from Senators on the various bills and amendments pending before this Committee. Anyone who was present during those hearings or who has read the testimony knows that there is a great concern in the Senate regarding both the escalating cost of financing a campaign and the ways in which the campaigns are being financed.

In the two previous hearings, predominant issues which surfaced dealt with PAC contributions, the encouragement of small individual contributors, negative political advertising, and public financing of Senate campaigns.

The hearings today and tomorrow are to give interested parties and organizations an opportunity to present their suggestions on pending bills.

After the conclusion of tomorrow's hearing, this Committee will have the task and responsibility to deliberate and report legislation to the Senate that will address these concerns.

Let me take this opportunity to thank those who are here today to testify and for their willingness to share their views and to help this Committee consider these issues. There are many, many people who have asked to testify. Most of them have been most considerate by allowing us to place their statements in the record, which will give us an opportunity to consider their position. We regret that we are limited for time and hope that those who are not able to testify will understand that completely.

Today we will start with William J. Baer, Esquire, Lobbyists and Lawyers for Campaign Finance Reform. Bill.

Senator STEVENS. Mr. Chairman, I do not want to be redundant, but I do think that the basic issues before us today—public financing, using taxpayers' money for Senate campaigns; and limitations on campaign expenditures are the issues embodied by S. 2. I do hope that today's witnesses will focus on those issues. I think both the majority and the minority members of this Committee are looking for a compromise, or at least some sort of revision to S. 2. It would be very helpful if we do have those comments when the witnesses come before us today.

Thank you.

TESTIMONY OF WILLIAM J. BAER, ESQ., LOBBYISTS AND LAWYERS FOR CAMPAIGN FINANCE REFORM, WASHINGTON, DC.; ACCOMPANIED BY LLOYD MEEDS, ESQ., WASHINGTON, DC., AND JOHN McEVOY, ESQ., WASHINGTON, DC.

Mr. BAER. Good morning, Mr. Chairman. Good morning, Senator Stevens.

Let me begin by introducing my two colleagues. On my left is a gentleman well known to you, the Honorable Lloyd Meeds, who was a distinguished member of the House of Representatives from 1965 to 1979, and is now a partner in the law firm of Preston, Thorgrimson, Ellis and Holman.

To my right is another gentleman who I suspect is well known to many of you. John McEvoy is formerly chief counsel and staff director of the Senate Budget Committee, and he currently is a partner in Kutak, Rock & Campbell here in town.

My name is Bill Baer, and I'm a partner in the law firm of Arnold & Porter. My colleagues, Lloyd Meeds and John McEvoy, and I are pleased to be appearing this morning on behalf of Lobbyists and Lawyers for Campaign Finance Reform.

We are, Senators, a recently formed bipartisan group consisting of Republicans and Democrats, lawyers and lobbyists, fundraisers, election consultants and direct mail specialists, political veterans and political neophytes.

We are here because of our deep conviction that the current campaign finance process is badly flawed and in need of fundamental reform.

We began to organize last fall at the conclusion of the last congressional campaign cycle. As the members of this Committee well know, last November's election set a number of records of dubious distinction. Last year, candidates for the Senate and the House were compelled by the increasing costs of congressional campaigns to commit unprecedented amounts of time and energy to fundrais-

ing. We know because members of our group spent record amounts of time assisting you in those fundraising efforts.

Last year also saw record spending by congressional candidates in both primary and general election campaigns. And, as we all remember, campaign rhetoric plunged to record depths.

The electorate, the public, showed its appreciation for these trends by staying away from the polls in record numbers.

These developments and the realization that the escalation in campaign costs seemed endless led us to band together in order to let you know, and the other Members of Congress know, that we firmly believe that our current campaign finance rules have created a process that elevates money over substance and which benefits no one.

We expressed those views a couple of weeks ago in a letter to all Members of Congress. Since then, we have frequently been asked a couple of questions.

First, what specifically do the members of our group find objectionable with the current system? And, second, why would a hundred or so supposedly savvy and cynical Washington insiders publicly advocate campaign finance reform?

I would like briefly to address those questions this morning. Our basic and overriding objection with the current campaign process is that it has made raising money the centerpiece of congressional election campaigns. We firmly believe our democracy cannot afford a political process that requires you to be full-time fundraisers and part-time legislators.

Yet that is what most of you must do today for political survival. The costs of running a campaign simply demand it. And as witness after witness before this Committee has shown, those costs are continually increasing.

You and we know all too well the energy and time required to raise those amounts of money. Fundraising must begin the day after your election or re-election and continue right up to the final days of the election cycle. You must hire a costly direct mail firm to solicit funds from potential supporters. You must plan and stage innumerable fundraising events. You must spend countless hours on the phone and in person courting potential supporters and cajoling additional funds from long-time supporters. You must even learn to enjoy Swedish meatballs and other standard fundraising fare. And you must lend your support to the fundraising efforts of your party colleagues.

We believe that we simply cannot justify a system that requires legislators to divert so much attention away from their duties and their constituents.

Now, defenders of the status quo say that nothing really has changed, that money has always played a role in elections and that requiring fundraising by candidates is a healthy part of the democratic process.

But something really fundamentally has changed, and that is the overriding importance of money and fundraising in that process. Of course, money has always played and always will play some role in election campaigns, but it is one thing for our system to require a candidate to seek some level of financial support from his support-

ers; and it is quite another when raising money dominates the political agenda. That is where we are today, and that is why we believe change is necessary.

Let me emphasize that our group is not pointing a finger at current and would-be Members of Congress for doing what must be done under the current rules of this game. As long as campaign costs are virtually unrestricted, you have no choice but to commit the time and energy necessary to raise those funds. You are the victims of rules that distort the role of money in the democratic process.

It may surprise you, but we feel as much victimized by that process as do you. We are lobbyists and lawyers by training and by profession, yet the mounting cost of congressional campaigns forces professional advocacy and political savvy to take a back seat to fundraising efforts. We do not think that benefits our clients or the issues we represent on their behalf.

That is why our group was formed, and that is why my colleagues and I are here today. It is time to reorder our priorities and place the substance of issues at the top of the national agenda where they belong.

We believe new and lower limits should be established on the amounts that can be given to candidates in any election cycle. Equally important, limits should be established on what candidates can spend. If public financing is the best way of achieving that goal—and I personally believe it is—then most of the members of our group are willing to support legislation for partial federal financing of congressional campaigns.

We know, Mr. Chairman, that money has been and always will be a factor in electoral politics. There is no denying that or eliminating its influence. We can and should, however, circumscribe its significance. That should be the goal of this Committee's efforts, and we pledge to work with you in furtherance of that goal.

Thank you, and Congressman Meeds, John McEvoy and I would be pleased to respond to your questions.

[The prepared statement of Mr. Baer follows:]

STATEMENT OF WILLIAM J. BAER, LOBBYISTS AND LAWYERS FOR CAMPAIGN
FINANCE REFORM

Good morning. My name is William J. Baer. I am a partner in the law firm of Arnold & Porter, and I am pleased to be appearing this morning on behalf of Lobbyists and Lawyers for Campaign Finance Reform.

We are a recently formed group, representing diverse interests -- at least for a group formed inside the Beltway. We are Republicans and Democrats; lawyers and lobbyists; fundraisers, election consultants and direct mail specialists. Our clients include trade associations, corporations, labor interests, politicians and others.

We have at least two things in common: an active involvement in the legislative and political process at the federal level and a deep conviction that the current campaign finance process is badly flawed and in need of fundamental reform.

We began to organize last fall, at the conclusion of the last congressional campaign cycle. As the members of this Committee well know, last November's election set of number of records of dubious distinction. Last year candidates for the Senate and House were compelled by the increasing costs of congressional campaigns to commit unprecedented amounts of time and energy to fundraising. We know because members of our group spent record amounts of time assisting you in those fundraising efforts. Last year

also saw record spending levels by congressional candidates in both primary and general election campaigns. And, as we all remember, campaign rhetoric -- particularly media advertising -- plunged to record depths.

The electorate showed its "appreciation" for those trends by staying away from the polls in record numbers.

Those developments and the realization that the escalation in campaign costs seemed endless led us to consider whether, as lobbyists and lawyers and active participants in the political process, it was time to speak out in favor of change.

We decided to band together and let members of Congress and the public know we firmly believe that our current campaign finance rules have created a process that elevates money over substance and benefits no one. We expressed those views about two weeks ago in a letter to all 535 members of Congress. Since then, we have been frequently asked two basic questions:

First, what do the lobbyists and lawyers comprising your group find objectionable in our current system? And, second, why would 100 or more supposedly savvy and cynical Washington insiders publicly advocate campaign finance reform?

I would like to address both of those questions this morning.

Our basic and overriding objection with the current campaign financing process is that it has made raising money the centerpiece of congressional election campaigns. We firmly believe our democracy cannot afford a political process that requires you to be full-time fundraisers and part-time legislators.

Yet, that is what most of you must do today for political survival. The costs of running a campaign demand it. As witness after witness before this Committee has shown, those costs are continually increasing.

It was shocking enough in 1980 when the average Senate candidate spent over \$1 million. By last November the cost of a Senate campaign had skyrocketed to an average \$2.6 million.

You and we know all too well the energy and time required to raise those amounts of money. Fundraising must begin the day after your election or reelection and continue right up to the final days of the next election cycle. You must hire a costly direct mail firm to solicit funds from potential supporters; you must plan and stage innumerable fundraising events in this town and elsewhere; you must spend countless hours on the phone and in person courting potential supporters and

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cajoling additional funds from longtime supporters; you must even learn to enjoy Swedish meatballs and other standard fundraising fare. And you must lend your support to the fundraising efforts of your party colleagues.

Inevitably your staff is caught up in the process as well, searching for names to add to the mailing list and encouraging attendance at your fundraising events.

We simply cannot justify a system that requires legislators to divest so much attention away from their duties and their constituents.

Defenders of the status quo say that nothing has changed, that money has always played a role in elections and that requiring fundraising by candidates is a healthy part of the democratic process.

But something has changed -- the overriding importance of money and fundraising in the process. Of course money has played and always will play some role in election campaigns. But it is one thing for our system to require a candidate to seek some level of financial support from his constituents and others. It is quite another when raising money dominates the agenda. That is where we are today and that is why change is necessary.

Let me emphasize that our group is not pointing a finger at current and would-be members of Congress for

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doing what must be done under the current rules of this game. As long as campaign costs are virtually unrestricted, you have no choice but to commit the time and energy necessary to raise those funds. You are the victims of rules that distort the role of money in the democratic process.

But why would lobbyists and lawyers endorse campaign finance reform? Don't we relish a process that requires you to turn to us and our clients in order to raise significant amounts of money? Aren't we the prime beneficiaries of the status quo?

We don't think so. We feel as much victimized by the process as you do. We are lobbyists and lawyers by training and by profession. Yet the mounting cost of congressional campaigns forces professional advocacy and political savvy to take a back seat to fundraising. We don't think that benefits our clients or the issues we represent.

And we also realize that there is a persistent and unhealthy public suspicion that the money being given by political action committees and large individual donors does in fact buy access and unduly influence congressional decisionmaking.

We know from personal experience that the impression is mostly wrong. Indeed these days members of Congress are required to raise so much money from so

many different and often opposing interests, it is difficult to imagine that any one group could achieve special advantage. And the truth is that much of the campaign giving in this town is defensive. Groups donate money to a candidate or a party because opposing groups are doing the same thing and they do not want the stigma of not having given. Ironically, congressional campaigns have given rise to a process of private matching funds in which interest groups effectively neutralize each other by matching contributions.

Although the impression of special access in return for campaign contributions may be wrong, the fact that it persists is not healthy for you or for us.

That is why our group was formed. And that is why my colleagues and I are here today. It is time to reorder our priorities and place the substance of issues on the national agenda where they belong.

We believe new and lower limits should be established on the amounts that can be given to candidates in any election cycle. And equally important, limits should be established on what candidates can spend. If public financing is the only way of achieving that goal, then most of the members of our group are willing to support legislation which provides for partial federal financing of campaigns.

We know that money has been and always will be a factor in electoral politics. There is no denying that or eliminating totally its influence. We can, and should, however, circumscribe its significance. That should be the goal of this Committee's legislative efforts, and we pledge to work with you in furtherance of that goal.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Baer.

As you said toward the end of your statement, you support limiting the amount a candidate may receive or spend in an election cycle. Then you went on to say that if public financing is the only way to do this, and you suggest that it is, then most of your group would support partial public funding. That implies that your group is not all together on this issue.

Mr. BAER. That is correct, Mr. Chairman.

The CHAIRMAN. Do you know of any way to limit campaign spending other than by setting a voluntary limit tied to public funding? And if you do, share it with us.

Mr. BAER. Well, we have talked among ourselves of the idea of tax credits or other types of incentives for getting contributors to give money and tying some sort of spending limit to the availability of that tax credit; or vice-versa, tying the availability of the tax credit to a candidate's agreement to a spending limit.

I think most of us feel, and I personally feel, that a spending limit just does not do enough. The tax credit still is going to force you and us to be out there considerable lengths of time trying to raise money. What we really need to do is to find a system that de-emphasizes the importance of raising money, and instead places substantive debate at the top of the agenda.

Mr. McEvoy. Mr. Chairman, if I could add one thing to that, my perspective on this matter is that of a treasurer of a Political Action Committee, a medium-sized one in our law firm. I have given the Committee a statement which I would ask you to consider including in the record.

The CHAIRMAN. We will include it all in the record.

[The prepared statement of Mr. McEvoy follows:]

STATE OF JOHN T. McEVoy, LOBBYISTS AND LAWYERS FOR CAMPAIGN FINANCE REFORM

I am John McEvoy, a partner in the law firm of Kutak Rock & Campbell, and chairman and treasurer of its political action committee. Kutak Rock & Campbell is a five city law firm of 240 lawyers. Our firm instituted a political action committee five years ago to facilitate political giving by our partners.

Not all of my partners approve of the PAC system, though most participate in it. They recognize that Congress has made the rules for collective participation in the federal campaign finance system and we must adapt to them if we are to be effective in advancing our clients' concerns.

I do not appear here today on behalf of either the law firm or its PAC or to repeat the arguments for campaign finance reform which others have already put on the record. But I do want to share a few observations based on my practice as a lawyer who represents clients' concerns with the federal government and the administrator of a medium-sized political action committee.

This real world practical experience leads me to urge you to make significant reforms in federal campaign finance laws to reduce the legislative influence of political action committee money and in order to encourage greater individual participation in campaign giving.

First of all, I believe PACs discourage individual participation in financing federal election campaigns. Many who give to PACs might not otherwise give to any candidate, but having given to the PAC, they surely will give no more. Meanwhile, the PAC may contribute to candidates whom the individual giver would not support and may even vote against. For those who do not give to PACs, the well-publicized size of PAC giving contributes to the growing public cynicism that the political deck is stacked in favor of a few special interests and against the individual citizen. The continued decline in voter participation suggests that most citizens do not believe their voices count for much, even at the polls.

Second, PACs are single-minded in pursuit of narrow interests which may be at odds with the public good which government is intended to pursue. The purpose of most PACs is to "buy into" the legislative process on behalf of their

own agenda. To that end, they make contributions based largely, if not entirely, on a candidate's position on the narrow issues of the PAC's concern. I have never heard of a "good government PAC" which contributes on the basis of a candidate's whole record, without regard to his or her position on the issues which the PAC holds dear. We expect good government for free. Most believe the rest costs money.

This single-minded tendency can be seen most closely in many PACs' behavior regarding incumbents. Nearly every PAC of which I am aware supports -- or at least does not oppose -- the incumbent, regardless of party, unless that incumbent has conspicuously refused to support the issues of concern to the PAC. The reason for this rule is simple: incumbents usually win and usually remember who supported them and who supported their opponents. On the other hand, some PACs will vigorously pursue the defeat of those legislators who dare oppose their narrow interests.

Finally, I am aware that many argue that PACs exercise no significant influence on the legislative process, either because members of Congress ignore their pressure or because PAC contributions cancel one another out. But if PACs do not exert significant influence on legislative decisions, it is not for want of trying.

Having created a mechanism for narrow and single-minded interest groups and corporations to inject large amounts of money into the political process, Congress should not be surprised that the public believes legislative influence can be bought and is regularly traded.

If PAC money does not influence policy, then the federal election law is a kind of high-stakes shell game in which great amounts of money are lured from the hands of many well-advised interests who believe their money does influence federal legislation.

Most members of Congress may be immune to the influence of money in politics on most issues. But the fact that most members maintain their consciences in a sea of temptation does not redeem a system that permits a growing wave of PAC money to flood the field of politics.

The general public draws no consolation that most legislators assert immunity from PAC pressure. In authorizing PACs, Congress has set in motion a powerful engine to raise profound amounts of money from narrow interests whose major, if not sole, purpose is to influence public policy. Little wonder the general public is disillusioned.

If PACs are good, they are still good if they can give only three times what an individual can give rather than five times as much, as current law permits. Congress need not make a judgment that PACs are evil to acknowledge that a problem

exists which can be addressed through more reasonable limits on PAC spending and the creation of alternatives to PAC money for candidates who choose to avoid that system.

Certainly there are forms of undue influence and forums for exercising it which are not addressed by any single campaign finance reform. That any single proposal or set of proposals for campaign finance reform will not answer all the problems our current system poses is not an excuse for inaction, however. The ancient Chinese proverb calls us to remember that the longest journey begins with a single step. I urge you to take it.

Mr. McEvoy. That statement deals with what I consider to be some of the serious problems that the single interest character of PACs pose. One of the emphases that I think Bill is driving at, and I hope the Committee takes into account and the Boren bill does recognize, is the need to encourage our own state citizens' participation in fundraising. I think one of the disturbing factors, especially in these multi-billion dollar Senate races, is that we know that most of that money has to come from outside the state. If it is coming from outside the state, it may be coming from interests that are, in fact, against the interests of some of the citizens in that state—one industry in particular that finds its way into states where it has no native base. It is there because the candidates running those states need it, and it would be a lot better, it seems to me, for all of us if most of the money or a significant part of every election campaign fund came from the state of the candidate.

Mr. MEEDS. Mr. Chairman, if I may just briefly, it seems to me that limitation on campaign financing or expenditures by candidates is an absolute essential of any meaningful campaign reform. The high costs of campaigns require taking money in large chunks.

It is one thing to take \$100 from a contributor and vote against them. It is a totally different thing to take \$10,000 from a contributor and vote against them.

Now, obviously that is being done, but the unfortunate thing is that it puts the recipient in the position of either being ungracious or compromised. There is no in-between.

Only when you happen to agree with the position of the person who contributes are you totally free. As I say—you are either ungracious or obligated—one or the other. And generally speaking, you take money in campaigns from those with whom you agree. But the higher the limits become and the more that is required, the more essential it becomes to take it from places—

The CHAIRMAN. Well, let me take this a little bit further. When you are talking about public financing, if the Federal Election Commission's estimate is right, it will take ten million more a year in public financing than it does for the presidential race. If their figure of \$94 million for a cycle is correct, that means you have to have \$47 million annually from the check-off.

If a provision is made that you cannot go into the general fund, which I would support, then the cost is pro-rated. And then there are the millionaires who, under the law, can spend all the money they want to—10, 12, 15 million dollars. There is not a thing you lawyers can do about that, as long as the Court holds its present position.

I think that when you try to limit everything, you are saying to us to raise \$47 million a year from taxpayers, which comes out of their tax dollars, and put it into a Senate campaign alone. So you are talking about limiting it to \$10,000, and yet you are asking for \$47 million annually or \$94, \$95 million just for the Senate.

Then if the House goes with public financing, I would like to be out there running against some of my fellow colleagues or myself under those circumstances. So I think you have to consider the figures—\$95 million is a whale of a figure when you look at the statistics and the percentage of giving, or check-off, going down three or four percent. They will not have enough money for the 1992 presi-

dential cycle, and then they will have to pro-rate. Maybe that is not all bad.

But if you want it funded at the figure that Congress, or at least S. 2 lays out, it is going to be tough. It is all public financing. If we do not pro-rate, then we go to the general fund. If we go to the general fund, we will have real problems.

Mr. McEvoy. Well, Senator, certainly the numbers are significant. And having been a staff person on your side of the dais, I understand the pressures.

On the other hand, it seems to me that the Committee's very serious responsibility is to judge the question of cost-effectiveness in this area. What will it cost to restore and what is it worth to restore public confidence in the electoral process if you agree that there is a problem?

This morning's Post has an interesting article about one of our states, based on interviews in one of the states, about the decline of public confidence. It does not happen in government—

The CHAIRMAN. Again, that is basically due to negative advertising, and we need to get away from the negative ads. I think the public has said, "a pox on both your houses", and has stayed home. They do not like the mud-slinging that is going on.

I think if you and I are going to run against each other, you ought to put your face on TV and say, "I do not like that fellow, Ford." Now, I am going to turn around and put my face on there and say, "I do not like you, and these are the reasons why." Then I think we would get a little more activity and a little more interest rather than the glossy voice-over and a disclaimer at the end. You do not even know who is running. It could be an independent expenditure.

I think negative advertising is number one on the critical list with my constituents I have talked to. Secondly, with unemployment at 12 percent in my state, they would like for me to get the money from outside the state instead of in.

Let me ask you this quick question, and I will turn it over to my colleagues. The Boren-Byrd bill will attempt to limit the contributions received in an election cycle by limiting PAC receipts by any candidate; by reducing PAC contributions from \$5,000 to \$3,000; and by providing extra funds to a candidate whose opponent receives or spends more than the limit for the state.

Do you all support these provisions to limit receipts for the candidates?

Mr. BAER. I personally do, Senator.

The CHAIRMAN. You are speaking for a group now, and I am getting the impression that most of your group is for it, but not all your group is for everything. You sound like Congress. You know, we have to vote every once in a while, so we want you to get well on a vote of five to four.

Mr. BAER. Senator, I think our group is very supportive of the basic limits contained in S. 2, and I am comfortable that I speak for a consensus position within our group.

Mr. MEEDS. Mr. Chairman, I would just say that I am personally not opposed to PACs as such, but PACs do provide a very easy way to acquire large amounts of money by groups with single purposes and expend it for those purposes. So I basically am opposed to large

amounts of money being expended by an individual or a PAC which has a special interest in mind.

Mr. McEvoy. Senator, I think the statistics for PAC money in the last election suggest that there were \$130 million in PAC dollars given in the 1986 election cycle to both Houses, and that is a 27 percent increase over the last election. Those figures speak eloquently to the need to reduce the limits.

The CHAIRMAN. I know you take the overall figure, and we always talk about the negative. There are some good PACs out there. Let me just make a point of one down in my state.

We have a small PAC. The contribution from that PAC is \$1,500, maybe \$2,000, to a candidate. That would be a substantial contribution for them. But 70 percent of the employees in this one company are members of that PAC, and they get together and vote on who they want their money to go to.

Now, they may give \$10 a month or \$5 a month or whatever it might be, but they have put their money together in order to make it evident that they are involved. I do not see anything wrong with that. I have been around here a little while and raised some money before I got here.

I do not want to paint all PACs with a broad brush. I am very concerned about that. Some people are calling this "PAC-bashing time," if I can use that term.

Mr. McEvoy. Well, as treasurer of one, Senator, I think we have a good one. I understand what you are saying, and I am sure that a PAC can serve the important role of involving people in that special participatory way. I do think it is kind of a unique PAC.

The CHAIRMAN. Okay. Senator Stevens, do you have any questions?

Senator STEVENS. I generally share the Chairman's position. As a matter of fact, when the PACs came into effect on a broad basis for the business community as a result of the Campaign Act of 1974, it reflected the earlier success of the labor community, which had been very effective.

I am going to ask each series of witnesses here if we could have a list of membership. I understand you already gave it to some of our staff. The statement you have made indicates that you are a bipartisan group. Is that true? What is the balance?

I would be surprised if a group of Republican lawyers are for public financing.

Mr. BAER. Well, I was a little surprised too, Senator. We did. I think our group is predominantly either non-affiliated or Democratic. I think it is about a two-thirds split that way, with about one-third or slightly less Republicans. But we did have a number of prominent Republicans who feel just as strongly as we do: Rod Hills, the former chairman of the Securities Exchange Commission; Warren Elliott, who is a well-known lawyer and lobbyist for the insurance industry.

It is an issue about which the Republicans we have discussed the issue with feel as strongly as the Democrats do, and so we feel we can justly claim the title of bipartisanship.

Senator STEVENS. It seems to me that we are PAC-bashing to a great extent. Your colleague mentioned the increase in PAC contri-

butions. I am informed that total spending for the primary and general 1986 cycle, for both Houses, was \$435 million.

Why should we hold the PACs responsible for the escalation in cost of campaigns? What they really did was try to respond to the increased costs of campaigning. Political action committees contributed less in the 1986 cycle, percentage-wise, than they did in the 1984 cycle.

Mr. BAER. Senator, I have two observations in response to that. The first one is, I am not suggesting that PACs are causing the increase in the cost of races, but they are certainly participating along with the other factors in the increase. And I think one of the factors in the increase is that with the amount of PAC money that is available, those who do not get it must go out and raise more money elsewhere. So I think it is kind of circular. But if all the money in a campaign—

Senator STEVENS. Well, let us talk about that now.

The CHAIRMAN. Get after them. [Laughter.]

Senator STEVENS. How many of you also work not only with a PAC, but also work with a 501(c)(3) or 501(c)(4), a non-profit corporation?

Mr. McEvoy. I do, sir.

Senator STEVENS. We have non-profit groups engaging in politics do we not? Groups which use taxpayers' money for campaigning.

Mr. McEvoy. Well, not the ones I am associated with, no.

Senator STEVENS. Well, you would not admit to it. I understand that. Very few people will. But the "get-out-to-vote" campaigns, the public education campaigns are part of politics. And we saw it on both sides of the aisle last year in increasing amounts: more money coming from the non-profits, in terms of new money, than came in from PACs.

Mr. McEvoy. I think that is an important issue, Senator, and I for one—and I think it is in my statement—would suggest that there are other things besides PAC money that are problems in the elective process.

I think PAC money does provide the unique situation where the \$130 billion was, with rare exceptions, specially motivated, different causes, but single causes in many cases or very narrow causes. That kind of distinguishes the money.

Senator STEVENS. Well, what is the 501(c)(3) and (4) money if it is not specially motivated? It is more narrow than PACs.

Mr. McEvoy. I think you have two advantages, Senator, with regard to the public surveillance of those moneys—they are on record, and they are limited to specific purposes that Congress has sanctioned. Those are generally, in the case of 501(c)(3)'s, relatively limited, and you certainly have the ability to limit them further.

Senator STEVENS. We are still trying to see if we can get some answers as to what happened in the last election with that kind of money. Some of my colleagues were defeated, in the last ten days of the campaign, by the onslaught of 501(c)(3) and 501(c)(4) money. No one has looked at that. We cannot get anyone to look at it, and I think it is the worst part of the scene.

Mr. McEvoy. Well, I am not disagreeing with you, Senator, that that is something that you ought to look at and deal with. What I

am suggesting is that it should not become a substitute for dealing with the problem, which I perceive as special limited—

Senator STEVENS. What about "soft money"?

Mr. McEVoy. "Soft money" is also a problem.

Senator STEVENS. S. 2 does not "cover soft money".

Mr. McEVoy. Sir, I would like to see something done about "soft money" as well. I agree with you.

Senator STEVENS. Do you have any ideas? We are full of thoughts but no ideas. How would you control the "soft money" issue?

Mr. McEVoy. Senator, my experience with soft money is mainly in presidential races, but my experience with it is that I do not think Congress really intended to happen what has happened, and that you could, by a close examination of what has happened since soft money became a factor in politics, create a system of much greater disclosure and more limited purposes—which after that would be a matter of enforcement.

Senator STEVENS. I am looking at a concept which would require anyone who performs any role in a campaign, while being compensated by a company, a union or an individual, to report that time. What would you think about that?

Mr. McEVoy. I think it is a perfectly valid consideration.

Mr. MEEDS. Laudable.

Senator STEVENS. What about the concept of prohibiting 501(c)(3) and (c)(4) corporations from making any expenditures in the 60 days before an election?

Mr. McEVoy. I do not claim any expertise in that area, Senator, but if the Congress became concerned that that was an issue, it seems to me that it ought to be taken into account in connection with the overall reform of campaign loans.

Mr. MEEDS. Senator, if I could just respond briefly, it is at least my understanding that 501(c)(3) campaigning is forbidden, that political action is forbidden. A certain percentage of the activity of 501(c)(3) groups can be to influence legislation, but the expenditure of funds of 501(c)(3) organizations for contributions is strictly forbidden.

Senator STEVENS. All right, let me tell you what I found in one campaign.

In the last ten days to two weeks of the campaign, a 501(c)(3) corporation came into the state and started a direct-mail, fund raising campaign. "We need your money. Will you contribute to our cause? Because if this Senator is re-elected, we will have to lobby even harder to overcome his point of view in the United States Senate. And what is more, we not only want your money, we want you to talk to your friends, get out and vote because you still have a chance in your state to prevent the continuation of this philosophy." That is 501(c)(3) money; it was legal. This direct mail campaign had an adverse impact on that election. The substance of the appeal was entirely erroneous, by the way, in terms of the candidate involved.

Now, that kind of expenditure is not currently reported to the FEC. It has a fantastic impact on a campaign.

Mr. MEEDS. I totally agree with the Senator that that kind of thing should be prevented, and I think that the House and Senate should undertake to do something about it.

Whether that can all be done in one bill on campaign finance, I am not so sure. You know, sometimes the best is the worst enemy of the better, and it may be that we need to improve this thing in manageable quantities rather than trying to improve the whole situation at once.

I agree totally that that is a perversion of the use of so-called soft money and should be curtailed.

Senator STEVENS. Let me ask one last question, and, Lloyd, it is stimulated by a comment you made.

You know, being from Washington, the situation in terms of the Alaskan economy. A great portion of the Alaskan economy is controlled from the Seattle region. As a matter of fact, being from a resource-producing state, the timber from my state goes to Oregon; the oil from my state goes throughout the United States. Additionally, we operate a tourist economy, and the people who send package tours to my state are located down in the southwest and southeast.

All of these non-Alaskan businesses are making a substantial amount of money out of my state, a lot more than the people who live in the state are making.

What is wrong with me going to southern California, to the tourist industry, appearing before such a group and receiving a contribution from a political action committee of the tourist association? What is wrong with me going to Denver and receiving a contribution from the political action committee of the people refining Alaskan oil? What is wrong with me going into Oregon and receiving a contribution from the people who are processing Alaskan timber?

The money that comes from the economy of Alaska is spread through the whole United States, and if I am to raise money for campaigns at the level of expenditures required today, it has got to come from somewhere. It is not going to come from the employees in Alaska who, by definition, are not a group of millionaires.

Mr. MEEDS. First, let me tell the Senator that it was always a pleasure to work with him on issues involving Alaska, and we in the state of Washington were very pleased to have the fine relationship with the Senators and the people from Alaska.

There is absolutely nothing wrong with the Senator from Alaska doing precisely what he says so long as that does not become an inordinately large part of the total cost of the campaign. So long as the Alaskan citizens are involved to the maximum extent, I see nothing wrong with doing that.

Senator STEVENS. And I think the record shows, and I think you would all agree the record shows that, overwhelmingly, individual candidates are supported by individual contributions, rather than PACs. And yet this hearing is attacking PAC contributions, not individual contributions.

Why is that so? You all have mentioned your assumption that PAC contributions have led to an erosion or contributed to an erosion of public confidence in Congress. I do not know of any Senator who got more than 50 percent of his contributions from PACs.

Mr. BAER. Senator, I do not think the members of this panel intend to engage in lots of PAC-bashing. Our concern and the concern of our group is that the costs of campaigning—which you

mentioned in your question to Congressman Meeds—have gotten out of hand and require too much time, by legislators, by their staff, by lobbyists, by PAC organizers, raising money. We have got to do something to put a cap on the amount of money that must be spent in a congressional campaign. That is the focus of our concern.

Senator STEVENS. It is not the source of the contribution. The bulk of the attack is against PACs.

Mr. BAER. I personally do not subscribe to the view that it is all the responsibility of PACs. There are lots of large individual givers who give tremendous sums of money, who are just as effective and as influential as any PAC in this country. PACs have gotten most of the bad publicity about it because they have given the largest amounts of money.

Our real concern is with the cost. You know, you cannot simply limit the supply, we have found, by imposing limits on what can be contributed. You have got to impose some kind of limit on the demand. And given what the Supreme Court has done, the demand for the funds from candidates cannot be limited without some kind of voluntary agreement to that limitation by the candidate. That is why public financing seems to be an appropriate experimental vehicle towards getting there. It is going to cost something. It may not work perfectly, but our basic concern, the focus of our group is that the present situation is so intolerable that something has to be done.

Senator STEVENS. Well, I have two last questions. Did any of you read former Senator Gene McCarthy's piece in the Sunday paper recently? He was being nostalgic about "the good old days" when someone could have an individual who really had confidence in a candidate and would contribute 40, 50, 60 thousand dollars, and he did not have to go see 15 or 20 PACs and appear at all these fundraisers. You just go run your campaign and get someone to finance it for you. Did you read that?

Mr. BAER. No.

Mr. MEEDS. I did not read it, Senator. I heard about it, however.

Senator STEVENS. We thought we were reforming the situation when we stopped that. Were we wrong?

Mr. McEvoy. I think, Senator, that my own view would be—and I say so in the statement—that if PACs are good, they are still good if they can give only three times what an individual can give instead of five. I think you have decided a \$1,000 limit on individuals and \$5,000 on PACs. It seems to me you have taken care of the individual. The question is, are the PACs too big, and that is an issue you will have to decide.

My own view is that \$5,000 may be too much to allow a PAC to give.

Senator STEVENS. This bill establishes public financing for Senate campaigns. If there is a problem with PACs the problem is in the House. What about the House? Can we expect public financing to remain solely a Senate mechanism? Is this not another example of putting the camel's nose under the tent flap?

The real need for public financing is in the House. Why do we talk about public financing being exclusively for the Senate?

Mr. MEEDS. Senator, I think it goes with what I said earlier. Sometimes problems are so large that you have to take them on in increments, and the Senate putting its own house in order—and that is not a pun—is something that is more easily done than trying to cure the whole problem.

I would certainly hope that the House would pass legislation which does very similar things that S. 2 does and that you could go to conference and we could have a law affecting both House and Senate.

In the absence of that, I think it would be better for the Senate to go forward with its own campaign reform and do it, as they have done on individual matters such as the expenditures of funds and reporting and a lot of things which are different than the House and, I might say, in many instances better.

The CHAIRMAN. Let me interject here just a minute. That is well and good, but I am one who has thought the expense of Senate offices, particularly postage, has just gotten completely out of hand—about \$140, \$150 million a year. I introduced a resolution that was accepted, and we are now operating under that and we saved \$36 million in this fiscal year in the Senate alone.

I see my colleagues' frustration when the House sends out six newsletters, and they do not worry about the cost. It goes to "patron box holder" or whatever it is, \$400 and some odd thousand, six times a year.

Now, my colleague on my right here has a far greater problem than most because of his remote area; the need for postage, need for mailings and things of that nature is extremely important to him. So the Senate took care of theirs, and I am the culprit and I cringe when I hear the problems. We hear from so-and-so six times a year, and we do not hear from you any more.

Well, we took care of ourselves. And many of the Senators who ran last time were defeated by Congressmen because they were doing it. I know you understand, Congressman, what I am saying, but sure the Senate took care of itself. But at the same time, the House does not and they keep rambling on, and it becomes very frustrating.

The decent, honorable men and women in this body would like to put out a newsletter to bring constituents up to date or survey opinions on things that are necessary; the House does it all the time. It does not seem to be penetrating.

I just want to tell you, it is nice to take it in increments, but if you know you are going to get a hundred percent of those increments—

Senator STEVENS. Would you yield just one second?

The CHAIRMAN. Certainly.

Senator STEVENS. That is the dichotomy. We have saved some \$40 million of taxpayers' dollars by what Senator Ford has described. This bill, if it is made applicable to the House of Representatives would cost \$300-400 million at least, every two years. Between \$300 and 400 million, minimum, every two years for public financing, if it covers the House and the Senate.

Now, I do not know how we can approach the taxpayers and say, look, we have saved \$40 million, we cannot send out any newsletters any more, but we are going to assure that there are two candi-

dates in every race, in every district, in every primary, and in every Senate race, one-third of the Senate every two years. That is a cost of between \$300-400 million.

As far as I can tell, only Common Cause is pressing for the "Public financing" solution. They put forward this idea and then send out fund solicitation letters to the public outlining this "solution" and asking for tax deductible contributions.

The CHAIRMAN. They do not reveal the income sources of their officers.

Senator STEVENS. They do not have any salary limitation. They do not have any reporting of expenditures. I think we ought to look at the people who are arousing the public as to the funding of elections for the Congress.

Senator GORE. Would the Senator yield?

The CHAIRMAN. Senator Adams has been here a long time. Senator Adams is next.

Senator ADAMS. Thank you, Mr. Chairman. I just have one question that goes to this, and I appreciate your all being here. I might say, Senator, that I have recently been involved with what all these gentleman are talking about, and I agree that both sides are victims. So I want to talk about the cap.

I am afraid we might operate at the margin, and I want to know whether your group would support the concept that we operate at the area of, say, a million dollars or above, and that if you do not voluntarily accept the public financing concept in the final of, say, \$1 million, that it goes automatically to your opponent. Would you support that?

I am trying to think of a way to put an effective cap on, and if we are going to use public financing, to use it as a real conceptual lever to require somebody to accept limits. And I do not think you can do this unless you deal it a significant amount, but I want there to be a stick as well as a carrot in this.

Let us just say in the final election two of us are running, and that there is allocated to my state on the basis of population, however you want to do it, \$1 million to each candidate. But I am running against somebody who is capable of raising three or four million or has got \$15 million of their own. Would you support the concept that we each are to get a million dollars, but if he does not accept the limit of just spending the million that I get the million so that I have got two million instead of 15?

Mr. MEEDS. Senator, I do not know. That is the first time we have been presented with that kind of a solution, but I certainly agree with the Senator that some kind of solution must be provided so that people cannot simply go out and spend all their own money—

Senator ADAMS. But how can you produce a cap? It has to be voluntary unless you have a real stick.

Mr. MEEDS. The Senator has just described one way to do it, and I think that is a good way. I think that whole area has to be examined, and that may be the best way to do it. But certainly something has to be done.

Senator ADAMS. Well, let me tell you why I suggest that as being something practical that operates out in the trenches when you are in the election. It is why I am so much in support of campaign

reform, and I am not trying to discuss the limits. I happen to think that individual limits should be higher, and I am not here to PAC-bash and so on.

But the real problem is getting a ticket into the ball park. In other words, money has now become something that, when you get to the final election or you start a campaign, you are not considered a candidate if the other side has significant amounts of money to begin with, even if you have potential or even if you have a fairly significant amount of money.

I am trying to think of a pot that ends up at the end where, if both do not accept the limit in the final election, one side's money goes to the other. Mr. McEvoy?

Mr. McEvoy. I believe it makes a lot of sense. I do not know about the million dollar figure. I guess it depends on the state.

Senator ADAMS. I picked that figure. You could use a formula, but I do not think you ought to be marginal about this. In other words, if you say \$100,000, it does not mean a thing, because to buy in a relatively small state—I am from Washington—the television bill is not going to be a million dollars. You are not going to get any place. So if you say at the end of this you are going to get \$100,000, everybody says, well, so what, you are still not viable, you are not a candidate, there is not going to be an election.

Mr. McEvoy. I would agree with the Senator. I think the Boren bill tries to address that, but I would agree with you entirely that you have to create a sufficient incentive for one candidate to accept the system and then you have to have a really strong incentive for the other candidate to go along with it; and giving the other candidate's money to the one who accepts it, if the second candidate will not, is one way to do it.

Mr. MEEDS. Or to provide for the second candidate when the one does not accept it and spends a lot of his own money, additional funds to—

Senator ADAMS. Well, no. I would take away from the candidate who does not accept. Would you support that concept?

Mr. MEEDS. Yes.

Senator ADAMS. I will be very brief on that. I would support an increase because I understand the Chairman's problem on the check-off. One reason, Mr. Chairman, that I asked that question is that I think we ought to find out from the American public if they really are interested in campaign reform. We would be talking about maybe another dollar or another two dollars in the check-off in order to fund this.

Would you support that kind of an increase?

Mr. BAER. Absolutely, Senator. I think you put it just right. It would give the American public a chance to decide whether it wants to kick in a little money at tax return time and fund this kind of a system, or whether it wants to continue to allow this constant process of fundraising and the consequential mistrust and cynicism that seems to be developing in election campaigns.

It is going to cost a lot. There is no denying that. If we do it through a voluntary check-off, it is not a direct raid on the Treasury, at least. We increase the amount from \$1 to \$2, and from \$2 to \$4 in the case of a joint return. Let us give it a try. Let us see whether it works.

Senator ADAMS. I would just close, Mr. Chairman, with a comment rather than question, which is, having run both House and Senate races, I would hope we do something at least on the Senate side first because of the quantitative difference of the campaigns. In a Senate campaign you are almost automatically forced—well, I think you are automatically forced—into television and very high cost media campaigns. In a congressional district, mailings, other kinds of things are do-able, but I do not know many Senate candidates who can doorbell a state. And I am not trying to argue the mailing. I do not care which way you go on that. But it also is more manageable in that we are only dealing with 33 races to begin with, and I happen to agree with the Chairman on the costs and that something should be done on the House side.

I would hope that we would not let that deter us from moving on the Senate side to get a cap on these things. Mr. McEvoy?

Mr. McEvoy. Senator, I just want to endorse your point about the one to three dollars. The one dollar, as I recall it, was enacted about 20 years ago, and if you looked at the inflation adjusted value of that, it would probably be closer to five to ten as of today. I think all of the costs that we look at are big when we look at them in absolute dollars. If we look at them in terms of that dollar when it was first enacted, that dollar does not go very far these days.

Senator ADAMS. Thank you, Mr. Chairman.

The CHAIRMAN. I might say that dollar looks bigger than inflation right now. It is very tough to come by when you have counties in your state with 55 percent unemployment. Because of the coal situation it is going to be awfully hard to get them to check off.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

Mr. Chairman, I think this panel has done its best to try and present a balanced view. I am not necessarily in agreement with your views, but I think you have conscientiously come forward.

I myself will seek to work into this legislation, as will Mr. Stevens, the maximum amount of disclosure. That, to me, is the key. There was an interesting article in the Washington Post this morning on typical voters and their disaffection with the system. When you come right down to it, what they are looking for is an individual who is honest and who will work hard. They may disagree with a lot that individual does in public, but if they have those two qualities, they stand a stronger chance of keeping that public trust and remaining in office.

I was going to address a specific point to our former colleague here. I copied down two quotes from you. You characterized PAC money as "easy money" and "large amounts of money." Now, large amounts, you meant in the aggregate, not two or three thousand itself.

I am concerned if we knock it down a couple thousand this time, we will be back here in a year or two and we will try and knock it down again. Where do you propose we stop on this scaling down?

Mr. MEEDS. I believe I said that it was an easy way to accumulate large amounts of money.

Senator WARNER. Yes, I think you are correct.

Mr. MEEDS. And that I have no specific grief with—

Senator WARNER. What did you mean with that? I have got two PAC receptions tonight. I am not up for four years, but we, all of us, have two or three a night. That is not easy.

Mr. MEEDS. I did not mean it from the candidate's standpoint, sir.

Senator WARNER. Well, also those of us who are not candidates attend. It is a substantial drain on our time, and when I talk to a PAC individual, I try to elicit from that person what are the issues that concern them, even though it is a fundraiser and we are biting a hot dog on both ends. You are trying to utilize that time as constructively as possible; at least that is the way I approach it.

Mr. MEEDS. I probably did not articulate as well as I should, but my major problem is the high costs of campaigning and having to accept large donations from any single source.

Senator WARNER. In the aggregate?

Mr. MEEDS. No. In the aggregate or in an individual instance.

Senator WARNER. But in a two or three million dollar Senate race, a couple of thousand dollars, while it depends on which end of the telescope you are looking through, is not great.

Mr. MEEDS. Yes, but the larger the amount that you have to spend in the aggregate, the more you have to take in the individual contributions, the bigger contributions you have to take. And I think that is the most insidious thing, whether it comes from PACs or wherever it comes from. Because it causes the person to be obligated or ungracious, one or the other; there is just not much in between. And that is what I think is insidious.

Senator WARNER. But to a far lesser extent than the article that Senator Stevens was talking about where we used to have 40 or 50 thousand dollar contributors.

Mr. MEEDS. Yes. And I would say the same thing about the former Senator's statement.

Senator WARNER. We do not want to return to that ever.

Mr. MEEDS. I do not think I would want to return to the good old days.

Senator WARNER. I am not sure they were that good.

Mr. MEEDS. I think we are better off today even with the problems we have in this system. And I did not mean that it was an easy way for candidates to get money. I meant it was an easy way to accumulate large pots of money from the PAC itself to get it from the contributors to the PAC, to get it in a single source which has a single interest.

Senator WARNER. That clarifies it now. Thank you.

Mr. MEEDS. Thank you.

Senator WARNER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Gore.

Senator GORE. Thank you very much, Mr. Chairman. I was going to interject a point briefly earlier to emphasize that the funding for these proposals comes from the voluntary check-off, and I think that is an important point to make in addressing the difference between funding for that and funding for newsletters. I think if we had a voluntary check-off for newsletters we would not raise very much money.

I wanted to mention this before my colleague left, but I will ask him for support privately. I introduced legislation embodying the

suggestion that he made, not as a substitute or alternative for the Boren bill or the other bills that we have before us; indeed, it is consistent with those bills. It could be added to them. And in the unhappy event that the Senate finds itself unable to pass a major piece of reform legislation this year, it could serve as a minimalist approach that would, nevertheless, do some good.

The basic concept, and I would like to briefly get your reaction to it, is to set a spending cap in each Senate race with the cap based on historic figures for what campaigns have cost in that state; in other words, a fairly generous cap to begin with. If both candidates decided to abide by the cap, then the cap would have the force of law and would be in force.

If neither candidate agreed to abide by the cap, then it would not apply, and the situation would not be changed from what it is right now. If one candidate agreed to abide by the cap and the other did not, then the candidate that did agree would receive a match equal to the limit in that particular state, thus providing a powerful incentive for the opponent to also voluntarily abide by the cap and thus deprive his opposition of that matching money—which also would come from the voluntary check-off.

I have had a number of people analyze it and respond favorably to it. I want to emphasize again that it is not offered as a substitute for measures which are more far-reaching, which I support. But I am interested in your reaction to that idea, either as an add-on or as a last resort as something if the other measures prove to be unworkable politically this year. I hope they can pass.

Mr. BAER. Senator, my initial reaction is that it is a very good idea, that it probably would pass constitutional muster—which is the first hurdle all of these spending limitation type bills have to overcome—and that it would, if there is a considerable doubt as we get into funding of House and Senate congressional campaigns, provide a potential alternative to what would be a fairly substantial financial commitment on the part of the U.S. taxpayer through the check-off system. So I applaud the idea. I have not really had a chance to consider it in detail, but it sounds like a way of dealing with some of the problems that have been pointed out here by the Chairman and others with some of the proposals pending before the Committee.

Mr. McEvoy. I do not think, Senator, anybody who has worked, as a number of us have, on your side of the dais—I did for 15 years—has anything but sympathy for the situation that you are in or for the proposal you make. Anything that could limit the time and exertion you have to go through with regard to raising those funds for campaigns, I think it would be a welcome change.

As you recognize, it does not address the question of where the rest of the money comes from, and I think that is something that S. 2 does try to do.

Senator GORE. Yes.

Mr. McEvoy. But it is better than nothing, certainly, sir. The problem of cost is so much out of control that we are all suffering as a result.

Senator GORE. And, again, I am a cosponsor of S. 2.

Mr. MEEDS. Senator, my initial reaction is that it is a very good proposal and would be very effective in helping not only to keep

people from spending a lot of their own money to get out from under the cap, but it would also limit them in that they know that when they do not do this, that money goes to the other person and makes his or her campaign more viable.

Senator GORE. Well, I want to share in the comments expressed by my colleague from Virginia earlier in complimenting this panel. My former colleague in the House and the other two members of the panel have really provided some great testimony.

Mr. Chairman, I am going to have to preside over in the Senate, and I wish to apologize to other witnesses who will follow this panel to the dais if I am not able to return because of that. Thank you.

The CHAIRMAN. Thank you, Senator. Other questions begin to boil up, but we have taken an hour with you three and we will be through at 11:00 p.m. tonight if we keep up at this rate. We would probably continue to have a crowd. I do thank you, Bill, for your attendance. There may be some advice and counsel we could get from you based on questions that would come from the Committee, and hopefully you could respond to those in a timely fashion. We do hope to go to markup very shortly.

Thank you all very much.

Mr. BAER. Thank you, Senator.

The CHAIRMAN. The next witness will be G. Anthony Campbell, representing the U.S. Chamber of Commerce. Mr. Campbell, if you want to submit your full statement for the record, it will be included as if given. You may highlight it, however, if you prefer.

TESTIMONY OF G. ANTHONY CAMPBELL, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. CAMPBELL. Thank you, Mr. Chairman.

Mr. Chairman and members of the Rules Committee, my name is Tony Campbell. I am general counsel and secretary of Flowers Industries, Inc., of Thomasville, Georgia. As a member of the United States Chamber of Commerce Public Affairs Committee, I am pleased to have the opportunity to testify on behalf of the Chamber and its 180,000 members on proposals for taxpayer financing of congressional elections and limits on political action committees.

The continued increase in campaign spending by congressional candidates has rekindled campaign finance reform sentiment. The harshest attacks have been directed toward the role of political action committees. We are both proud and willing to speak out about the value of political action committees and our current system of financing congressional elections.

Raising voluntary contributions from individuals, political action committees are formed to support candidates for public office. Political action committees are established by organizations such as labor unions, corporations, trade associations, and individuals who may temporarily band together in support of common interests. Political action committees now exist at every level of our electoral system.

The right of individuals to form groups and participate in the democratic process was established in the constitutional guarantee of free speech. As recently as 1976, the Supreme Court reaffirmed

in *Buckley v. Valeo* that the right of association is a "basic constitutional freedom, closely allied to the freedom of speech and a right which, like free speech, lies at the foundation of a free society."

Individual participation in the political process is the cornerstone of democracy. An estimated 4.5 million people now contribute to federal elections through committees sponsored by corporations, unions, and trade and professional associations for their employees and-or their members. Strict rules governing the operation of political action committees are enforced to protect the integrity of the political process. Political action committees play a legitimate and positive role in elections and greatly benefit the process. Contributions by political action committees are fully disclosed and widely reported to the public.

The costs associated with running for office have risen dramatically in recent years. Direct mail and television communications to the voters are enormously expensive, and account for a large part of the campaign budget for most federal candidates. In 1983, an estimated \$285 million—83 percent of all money spent—went to media, polling, and direct mail. While many are nostalgic about door-to-door campaigning and precinct volunteers, their use does not eliminate the need for television ads and direct mailings.

Campaign spending is necessary for an informed electorate and should be no cause for alarm. It is not possible to put a price tag on a Senate seat. So much is spent on campaigns because so much is at stake in federal elections. It is the competitive races that cost the most money.

Suggesting a limit on campaign spending presumes that there is an ideal amount to be spent. How much is too much? One million dollars? Two million dollars? Any limit is purely arbitrary. The American people are entitled to be as fully informed as possible as they consider political candidates. Voters should not be hampered by an arbitrary limit imposed by the government dictating the amount of information dissemination sufficient to allow an informed decision. Candidates, not the federal government, are the best judges of what they need to spend to adequately get their message across to the voters in their states or districts.

Because of disclosure, campaign contributions and expenditures are public knowledge. If the voters believe that too much has been spent by a candidate, the sources of the funds are questionable, or they simply disagree with the candidate's message, they can express their views at the ballot box. Voters are quite capable of making sound decisions when they are provided with sufficient information.

Perhaps it is the very public disclosure of campaign contributions that makes some recipients uncomfortable and has led to the scramble for haphazard changes in the federal election laws. One senator recently bemoaned the visibility of campaign contributions and offered such visibility as a justification for restricting the right of individual citizens to contribute to favored candidates. Politicians should be promoting rather than dismantling a system that has achieved such a degree of approval among the citizenry, as evidenced by the continued growth of political action committees.

It has been suggested that political action committees have too much influence over the Congress. The fact is, we believe that members of Congress are men and women of integrity. The Members themselves should be the first to the podium to challenge such a notion that questions their veracity.

Political action committees have enabled millions of Americans to become active in the political process and have increased public awareness. Such involvement ought not to be discouraged.

FLO-PAC, the political action committee of Flowers Industries, Inc., was founded in 1978 on the belief that the personal freedoms which Americans enjoy are available because of the free enterprise system. Our economic system gives freedom of choice through a market-oriented economy.

In selecting candidates to support for political office, we examine the record in search of philosophical commitment. We support those candidates who: believe in sound fiscal policy; oppose deficit spending; understand and support America's business and free enterprise market-oriented system; oppose the growth of the federal bureaucracy; and minimize government restrictions of freedom of choice for individuals and business. We support candidates of either party, without geographic restriction, who adhere to these principles and run effective, properly budgeted campaigns.

We are proud of the contributions that we have made and, for the most part, are proud of the records established by the candidates whom we have supported. Our committee does not support the use of political contributions to advance a special-interest legislative agenda without a firm philosophical commitment. Our commitment is to help elect business-oriented officials without regard to political expediency. In seeking to fulfill this commitment, FLO-PAC has contributed an average of \$150,000 per election cycle to federal candidates—challengers as well as incumbents—during the last four cycles. Our commitment is firm, and we believe that committees such as FLO-PAC should be encouraged to participate rather than dissuaded.

FLO-PAC does not make contributions in order to buy access to Members of Congress. We do not maintain a Washington office, and we do not engage in special-interest lobbying. We do, however, speak out strongly with regard to major issues of national importance and issues of significance to the principles outlined above. Simply stated, our commitment is based on a very basic belief that the system is best served by electing candidates with a strong philosophical commitment to the free enterprise system, not political expediency or self-interest.

We respectfully suggest that if candidates cannot withstand the public scrutiny of their campaign contributions, then they should not accept them or should not seek public office. Candidates are free under the current system to limit funds from any source they desire. If they feel compromised by the political action committee contributions, large individual contributions, out-of-state donations, or any type of funding, candidates may certainly set personal standards and limits—and many do so quite successfully.

While there may be abuses in the current system, certainly there are abuses in any system involving political power—the seniority system, the patronage system, the use of the frank, and so on. Po-

litical action committees are not the problem, but the Chamber supports voluntary guidelines for committees to follow in making contribution decisions. The Chamber's guidelines are simple and are as follows:

1. Avoid contributing to opposing candidates in a general election. Contributing to both sides lessens the impact of support and generally does not demonstrate philosophical commitment.

2. Contribute to candidates who clearly need the funds to wage an effective campaign. The purpose of political action committee funds is to effectively participate in campaigns of candidates who share the committee's philosophy. If a candidate has no opposition or clearly has no need for additional funds, a political action committee may use its financial resources more effectively.

3. Contribute during the election cycle. Waiting until the election to contribute gives the committee an opportunity to evaluate fully the candidates and the races, and thus allocate their funds more effectively. Candidates who can successfully raise funds from individuals in their state or district demonstrate local support and a commitment to the campaign that will lead political action committees to contribute early in the election year.

Similar voluntary restraints could be adopted by Members of Congress in guiding their solicitations of political action committee contributions and would be welcomed by the political action committee community. For example, candidates could limit the number of Washington fundraising events; confine their political action committee solicitation to election years; eliminate fundraising practices that give the appearance of a swap of access for campaign donations; or pledge not to convert campaign funds to personal use when they leave office. Such voluntary restraints address many of the criticisms of both political action committees and the fundraising tactics of incumbents without enacting a so-called "reform" measure.

The Chamber is opposed to S. 2 introduced by Senator Boren and cosponsored by Senator Byrd and 42 others. This measure is an intrusion into the individual freedoms of the citizenry by attempting to impose taxpayer financing of Senate elections and further restrict political action committees. Taxpayer subsidizing of Senate elections would dangerously extend the government's role in a traditionally voluntary political process based on individual choice. Citizens should not be forced to support, through their tax dollars, political candidates whose philosophies they may oppose or even support. Contributions should be freely given or freely withheld.

We often hear complaints about the amount of time candidates spend raising money for their campaigns and not discussing "real issues" with "real people," with this cited as the reason expenditure limits and taxpayer financing are necessary. Fundraising has traditionally forced candidates to articulate their views in order to gain support—both financial and electoral. Under the current system, candidates are free to decide how much time should be spent discussing issues or debating the opposition.

A system of taxpayer financing, which would guarantee funding, would reduce the incentive to go back to the voters on a continuing basis. Taxpayer financing does not require candidates to discuss real issues any more than the current system does.

If the goal is less time spent raising funds, then S. 2 should increase the current contribution limits for funds from private sources. This would provide more time to attend to constituents and Senate business. Because of inflation, political donations are worth less than half of their 1974 value, the year in which contribution limits were established. According to the Congressional Research Service, a \$1,000 individual donation in 1986 was worth only \$499.40 in 1974 dollars. When adjusted for inflation, a \$5,000 contribution from a political action committee in 1986 amounted to only \$2,247.

Consider our current system of funding presidential campaigns. Taxpayer financing has certainly not decreased the amount of time candidates spend raising money. Most presidential candidates have to start organizing and fundraising years in advance of Election Day. Nor has it stopped deficit-financed campaigns. Several 1984 presidential contenders are still shouldering substantial debts.

Proponents of S. 2 claim the measure's threshold requirements would send us back to the days when campaigns were funded by individual citizens at the grassroots level contributing small amounts. It is doubtful that such days ever existed. Campaigns were commonly funded and controlled by powerbrokers in the typical "smoke-filled rooms" without the benefits of public disclosure. The current law was enacted to change that.

Candidates may now focus their efforts on raising small contributions from constituents. However, with the requirements of S. 2 that the threshold funds come from contributions of \$250 or less and 80 percent within the candidate's state, the most likely scenario is of candidates undertaking massive direct mail campaigns—not holding \$10-a-plate fried chicken dinners with voters back home.

S. 2's supporters are also fond of noting that the measure is voluntary partial taxpayer financing. True, candidates have a choice of whether or not to accept taxpayer funding, and taxpayers can choose whether or not to contribute \$2 on their tax returns. But make no mistake, this measure would cost the federal treasury funds that could be used for other programs. Taxpayers are not given the option of deciding budget priorities for the federal government, so taxpayers who would rather see the funds go to feeding the hungry than to buying television ads for congressional campaigns are simply out of luck. The federal budget cannot afford this ill-conceived and unnecessary new entitlement program.

The public has consistently rejected using general tax revenues to support congressional candidates. A poll conducted in 1986 by Civic Service, Inc. found that 70.6 percent of the public opposed taxpayer financing of congressional elections. Seventy-three percent of those surveyed also opposed the current system of financing presidential elections. Currently, only 23 percent of taxpayers check "yes" for the \$1 entitlement to the presidential campaign fund on their tax returns.

By placing a ceiling on the amount candidates may accept from political action committees, S. 2 would have the effect of preventing many committees from contributing to candidates who share their philosophy. Beyond placing unwarranted restrictions on citizen participation, this cap on political action committee contributions has administrative consequences that must be considered.

There would be no timely way for political action committees to know whether or not candidates have reached their threshold before making a contribution. Would candidates be required to accept contributions on a "first-come" basis? Could candidates accept a contribution from one committee and refund it later so a different committee could contribute? Would political action committee managers be required to defer filing disclosure reports until after receiving notice from the candidate as to whether or not the contribution was accepted, (which would hamper full and timely disclosure)?

By lowering the maximum a political action committee can contribute from \$5,000 to \$3,000, are proponents suggesting that candidates are indifferent to \$3,000 but may be unduly influenced by \$5,000, or that candidates who accept 20 percent of their funds from political action committees are proportionally better legislators than those who accept 30 percent? The implication that they may be influenced by campaign contributions should be totally repugnant to the Members of Congress.

The goal of any reform of campaign law should be increased participation in our political process. This is not the result of S. 2. Campaign financing today is more honest, broad-based, and open to the public scrutiny than it ever has been in this nation's history. With full and timely disclosure, other restrictions on the amount and the method of making political contributions and expenditures become unnecessary. More limits, regulations, and taxpayer financing will only further insulate citizens from participating.

We strongly believe that citizens have a right and a need to act together to serve their political interests. Political action committees provide them with an effective and efficient way for doing so. Their lives are affected profoundly and daily by the actions taken by their elected representatives. They should make certain that their views are known to those representatives, and they should support those who share their values and attempt to unseat those who do not. That is precisely what representative democracy is all about.

None of us have any right to see our views prevail. But we have an absolute right—and, indeed, an obligation—to participate vigorously in the political process. When any significant portion of society does not vigorously participate, the process itself is diminished. Despite 13 years of contribution limits, candidates are raising and spending more money. This means more people are being brought into the process, if only as contributors, because candidates must raise limited amounts from a greater number of citizens.

Politicians talk about getting the individual involved again. We submit that individuals are involved in record numbers and are sending Congress a clear message not to further limit their freedom to participate.

Mr. Chairman, this concludes my prepared remarks, and I would welcome the opportunity to respond to any questions that members of the Committee might have.

The CHAIRMAN. Mr. Campbell, I understand you are from Georgia.

Mr. CAMPBELL. That is correct.

The CHAIRMAN. How in the world can you be against chicken dinners? [Laughter.]

Mr. CAMPBELL. I support chicken dinners, Mr. Chairman.

The CHAIRMAN. When you said, "not holding \$10 fried chicken dinners back home", I was a little bit concerned about that.

Mr. CAMPBELL. Mr. Chairman, I am afraid that that is one of the impacts of S. 2, that it would not lead to more chicken dinners.

The CHAIRMAN. You said that you were not holding \$10 dinners. I was just interested.

This thing cuts both ways, does it not?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. In your statement, you emphasize, and I quote, I think, "Taxpayer subsidizing of Senate elections would dangerously extend the government's role in a traditionally voluntary political process based on individual choice."

Now, let me ask you this question: Do you believe that this has occurred in our election of Presidents since 1976 when public financing of presidential elections began?

Mr. CAMPBELL. Yes, I think it has, Senator.

The CHAIRMAN. You think it has?

Mr. CAMPBELL. Yes, sir. To some extent, however limited that extent may be, it certainly has extended to the federal government and to the election process of presidential candidates.

The CHAIRMAN. Well, let me ask you this: Have presidential candidates discussed issues less since public funding was injected than they did before?

Mr. CAMPBELL. I do not think there has been any lessening of the issues discussed, Senator. It is simply a matter of philosophy as to how much the federal government should be involved in that process in limiting the participation in that process.

The CHAIRMAN. Yes, but you are talking about subsidizing taking away the ability to discuss issues. How is a presidential candidate going to get his money? Are you going to ship it to him in green bales and not disclose it, like they have in the past? Or do you want to increase disclosure, use public financing, and lay it out there where everybody can see it and everybody knows how much you can spend?

Mr. CAMPBELL. No, sir, I think the current system of financing congressional campaigns provides adequate disclosure—in fact, abundant disclosure—which in our opinion is the preferable way to address these issues. Those matters are publicly reported on by members of the media as we all know, and the voters have the opportunity to make their own decisions as to whether those are good or bad.

The CHAIRMAN. So you are relying on the way the media reports it, whether it is good or bad?

Mr. CAMPBELL. No, sir. I am relying on the media to report the Federal Election Commission filings.

The CHAIRMAN. Okay.

Mr. CAMPBELL. The media may comment on whether they are good or bad.

The CHAIRMAN. The media may comment on whether it is good or bad, is that what you are saying?

Mr. CAMPBELL. As they do.

The CHAIRMAN. Should we restrict media? Should they be required to reduce their rates so it will not cost so much? What should we do with the media? Is there any suggestion about that from the Chamber?

Mr. CAMPBELL. I have no suggestion at the present time, Senator. When you talk in terms of restricting the media's involvement, I think you run into constitutional questions. Of course, in terms of whether there are equal access provisions that may be considered or some type of pricing mechanism that would impose pricing controls on that type of thing is a matter for consideration.

The CHAIRMAN. Well, we always get the lowest rate available at any station. Of course, they go up just before you start your campaign, and then they give you the lowest one which was normally the highest one until that campaign is over.

The Senate passed a Fairness Doctrine yesterday. Were you familiar with that?

Mr. CAMPBELL. Not in detail.

The CHAIRMAN. I do not think your explanation and the Fairness Doctrine would be any more unconstitutional than other things.

In your statement, you state that PACs are not the problem. In the last election, PAC receipts by all congressional candidates, I think by everybody's admission here, amounted to 31 percent of total receipts by all candidates. According to Common Cause, 194 House candidates got at least half of their money from PACs, 50 percent, or more.

In your opinion, is there any point at which PAC receipts could become excessive?

Mr. CAMPBELL. Political action committee contributions, Senator, are derived from contributions from individual citizens who have banded together to support a common goal, if you will, or a common interest. I do not think that political action committee contributions in the aggregate could become any more excessive than total contributions in the aggregate, because they, after all, are contributions from individual citizens who support that particular group.

The CHAIRMAN. Well, would you try to lean a little harder on my question? In your opinion, is there any point at which PAC receipts could become excessive?

Mr. CAMPBELL. It is a matter of philosophical commitment, Senator, and I would say no.

The CHAIRMAN. Otherwise, you are saying it is in the eye of the beholder?

Mr. CAMPBELL. That is correct.

The CHAIRMAN. In your opinion, would more PAC involvement and more PAC contributions improve the present system?

Mr. CAMPBELL. Yes. We support political action committee involvement and encourage political action committee involvement.

The CHAIRMAN. And more contributions? Are you implying that you are for increasing the amount of money that PACs would contribute?

Mr. CAMPBELL. Yes, Senator.

The CHAIRMAN. How much increase are you proposing?

Mr. CAMPBELL. The basic notion is to allow as much participation in the political process as possible. As long as there is public disclo-

sure, that provides an adequate check and balance for improprieties that may result.

The CHAIRMAN. Basically, you are just going back to the old days—forget about present law, and just disclose all your receipts?

Mr. CAMPBELL. In the old days, you did not have disclosure of it.

The CHAIRMAN. I know, but I am saying to disclose whatever your receipts are, full disclosure.

Mr. CAMPBELL. Receipts and expenditures.

The CHAIRMAN. If S. 2 contained full disclosure, would that help you to support it?

Mr. CAMPBELL. No, Senator. S. 2 provides for partial public financing which the Chamber is opposed to, as well as reducing the activities of political action committees.

The CHAIRMAN. What if we increase the \$3,000 back to \$5,000, and then have full disclosure, would that help the Chamber's attitude any?

Mr. CAMPBELL. No, Senator, because an indispensable element of S. 2 would still be public financing of Senate campaigns which would be a drain on the treasury. Those dollars that go into financing Senate campaigns could be used elsewhere in the federal budget were it not for that provision.

The CHAIRMAN. Well, are you still in favor of public financing of the presidential races?

Mr. CAMPBELL. I can't answer that on behalf of the Chamber, Senator. I'd be glad to respond in writing in terms of the Chamber's position on that immediately hereafter.

The CHAIRMAN. I'd appreciate it if you would, and if you would do that in a timely manner—it would be helpful for us to have your comment before we go to mark-up.

Mr. CAMPBELL. We will do that.

The CHAIRMAN. Mr. Campbell, we do thank you for your attendance here today and appreciate your statement.

Mr. CAMPBELL. Thank you very much, Senator.

The CHAIRMAN. The next witness is Ms. Bonnie Reiss, treasurer, Hollywood Women's Political Committee.

We would like you to identify those who accompany you at the table.

TESTIMONY OF BONNIE REISS, TREASURER, HOLLYWOOD WOMEN'S POLITICAL COMMITTEE, ACCOMPANIED BY MARLENE SARITZKY, EXECUTIVE DIRECTOR, AND ILENE CHAIKEN, AARON SPELLING PRODUCTIONS

Ms. REISS. Mr. Chairman, I would be happy to. This is my colleague, Marlene Saritzky, who is the executive director of the Hollywood Women's Political Committee, and this is Ilene Chaiken; Ilene is head of television development for Aaron Spelling Productions and a member of the Hollywood Women's Political Committee.

I'm an entertainment attorney, and I'm a founding member of the Hollywood Women's Political Committee, and its treasurer.

The CHAIRMAN. Is it non-partisan?

Ms. REISS. Yes, it's non-partisan. We are issue-bound, but our issues seem to have us supporting more Democrats, it seems, than Republicans.

The CHAIRMAN. Well, that shows good judgment. Proceed. [Laughter.]

Ms. REISS. The subject of campaign finance reform is one of great importance to the Hollywood Women's Political Committee, as an organization and as individual citizens. We are aware that our PAC's position on this issue will be different from that of most other PAC's from which you will hear, because we are deeply concerned about the growing influence of PAC's on our legislators.

We are pleased to see that so many Senators share our concern and have made this a priority of the 100th Congress.

The Hollywood Women's Political Committee is comprised of politically active women from film, television and the arts, dedicated to supporting issues, candidates, and legislation which will promote peace, equality, freedom of choice, civil liberties, and the conservation of our world—all vitally important to us as women, and as Americans. We strongly believe, whatever our ideology or position might be on specific issues, that America deserves the best representative government possible. Whether Democrat or Republican, conservative or progressive, we are living in perilous and volatile times and we must have a system that encourages leadership from the best and the brightest, those women and men who deeply care about our nation's wellbeing and survival. It seems to us that the electoral system as it currently exists is totally at odds with this goal, as it shuts out the most talented, capable people of vision simply for their lack of funds—often before the primary process even begins. Under the current system, only those Americans that are very wealthy or those candidates that are backed by the very wealthy can even consider running. And once in office, our legislators often find themselves obligated to the narrow special interests upon which our system forces them to be dependent. The average cost to run a good primary campaign for even a House seat has escalated to the point of absurdity. And what must most Americans think about all this? Not much, obviously, judging from the continued decline in voter turnout.

Our PAC was founded in the summer of 1984, and since that time we have raised more than \$3 million for candidates all over the nation. In our three years of fundraising for political candidates and issues, we've experienced intimately the politics of campaign financing. It has not been pleasant. Hardly a week goes by when one or more candidates aren't in Los Angeles, trying to raise money for a race, one, two, four or even six years down the road. Just one day after the 1986 election, our office was already receiving calls from Senators whose seats will not be up until 1988 or 1990.

On the one hand, we are happy that you and your colleagues are making frequent trips to Los Angeles, because it affords us the opportunity to meet and discuss issues of mutual concern. On the other hand, we can't help but worry about the overwhelming amount of time spent raising money—yours and ours. It appears that when you are not traveling seeking money, you are on the phone seeking money. When you are not on the phone seeking

money, you are worrying about where else you are going to find money. We know you share these feelings, as so many of you have told us.

And under the current system we know you have little choice. It is clear to us all that far too much of your time, energy, and intellect is spent in demeaning pursuit of the almighty campaign buck. Can't we find a way to free you from all this, so that you can spend more time addressing the crucial issues facing our nation and our world, not to mention spending time with your families, reading a good book, playing a set of tennis, or even seeing a movie?

S. 2 is a critically needed first step in addressing these and other problems in our current campaign system: the overall spending required to wage an effective campaign for a seat in Congress; the evidence that shows a growth and disproportionate influence of narrow special-interest PAC's, which diminishes the input of small donors; and the avalanche of special-interest money being used to finance some of the most negative advertising ever seen, which obscures the real issues, increases the cynicism of most Americans and decreases voter registration and turnout. We also want to add our voices to those calling for an examination of primary financing and of unlimited independent expenditures.

The dream upon which our democracy was born is dying—the dream that all Americans share that any child could grow up to be president, or serve in the halls of Congress. How can this dream survive with a multi-million dollar price tag?

This generation and future generations of Americans are depending on your leadership in this most important area of reform.

Thank you.

The CHAIRMAN. Thank you very much, Ms. Reiss. I can see that you are a very intent woman.

Let me ask you just a couple of questions. I've got something that keeps bothering me—like you say, it's a reaction in the pit of your stomach—you referred to it just lightly at the end of your statement. You have referred to the Boren-Byrd bill as a good starting point to address some of the problems that you see in our present system.

What additional areas would you like to see us address in this legislation and make it more comprehensive and not just a starting point?

Ms. REISS. Well, first, I'd like to say that if legislation can't be entirely comprehensive to address all the problems, there is nothing wrong obviously with addressing some of the problems and trying to move on to the others.

I think the issue of primaries is important. In addition, the escalating costs of campaigns is the most important because of the drain of time, as we say, and the possible influence of narrow special interests. But also we don't want to see good people being blocked from the system. So the cost of primaries is a very important issue that has to be addressed.

And, as Senator Stevens was saying earlier, the use of 501(c)(3)'s and "soft money" accounts is another area that is terribly abused that has to be addressed.

The CHAIRMAN. You would consider it a much better bill if we had a section dealing with the primaries and the "soft money."

Ms. REISS. Well, obviously, I think, because under the current system so much money is required to get into campaigns that there are so many good people out there that if they are not wealthy or backed by very wealthy people they won't get involved in the primary system.

So I think that something has to be done about the escalating costs of primaries as well.

The CHAIRMAN. You mentioned negative ads. I think 1986 was the third lowest percentage of voter turnout in history—somewhere around 34 or 35 percent. Since you represent film, TV, and the arts, I'm sure that you have some ideas about it, and I want you to lay them out on the table, because I value your experience and your advice. How do we get away from negative ads? How do we get more to the issues and talk about those things? You may be an idealist, but we need you to think about those things and keep them pure. How do we get to that?

Ms. REISS. Well, our reaction from all the people we know and the people, the voters and activists in Los Angeles, is that it seems to us that people are continuously saying that they don't like negative ads, and we just hear bad feelings towards it. Yet it seems that all the media specialists that you and your colleagues hire say it works. So maybe part of the answer is for some of your colleagues to be a little more courageous next time their media consultants tell them it works, just saying I'm not going to use negative ads. And then maybe it will offer the constituents a chance to vote on that issue.

But right now there is no real chance to vote and prove the media experts wrong.

The CHAIRMAN. I am supporting a piece of legislation that we refer to as "talking heads," and that means that the candidates, if they are going to say something unkind about each other, have to be the ones on television saying it themselves. I believe Senator Evans has a proposal that the candidate must be on the total time of the 30- or 60-second spot—not just a voice-over—and the disclaimer flashed very quickly in the last second or two, so that you really don't know who sponsored the ad. It may be obvious but you are really not sure.

Can we get into something like that? Would that benefit you as it relates to hearing the issues, if we say to the candidates, "If you are going to be negative, say it yourself and do not hire some specialist to do it"? Your consultants would still get their money, because they would film the ad and develop it for you, but you would have to appear in it yourself.

Ms. REISS. Actually I think these media consultants are not really a part of the Hollywood-Los Angeles entertainment community. They've grown from the political circuit.

The CHAIRMAN. That may be true, but you understand how to develop a 30- or 60-second film.

Ms. REISS. I understand. Senator, I share your concern, and I think your constituents express concern that's overwhelming in Los Angeles, and probably all around the country, about these negative ads. And I think that something has to be done about it. I guess I'm not sure, because of First Amendment concerns, if something like that would be constitutional, or if the way to go is to

force the Senate candidates in their form of advertising. I'm not sure.

I do know, though, that somehow this makeshift advertising should change—and I speak for all our group, and many people in the Los Angeles community.

The CHAIRMAN. Well, we get the feeling—at least I do—that the voting public says, “a pox on both your houses”, and stays home. I think that's evident in the last election. And you've raised the only opposition, and when you are opposed to something you go to the constitutional question—it's unconstitutional. Well, some people say just to reintroduce the same bill as in the *Valeo* case, and since we've had a change of Court, maybe there'll be a different opinion. But I'm not sure. Most lawyers say whichever way you want to go, we'll make a good case of it.

So I'm not sure how this is going to come out. I'm going to try to have something in this legislation relating to negative advertising. And I hope we can put in something about individuals—if they are going to be negative, then they have to be on TV in person, they have to be on the radio spot, they have to sign the ad—something similar to that. If it's unconstitutional, so be it. I hope it won't bring down the rest of the legislation.

But if you have any ideas, with your legal talent, knowledge, and background, I would appreciate some advice and counsel on that. Senator Stevens.

Senator STEVENS. Is yours a partisan political committee?

Ms. REISS. Senator, the Chairman asked that before you came, and I said that we are not partisan. But we have nine issues that we have articulated that our group represents, and they are environmental concerns, women's rights, civil rights, end to the arms race, things like that—and that's our judgment for how we select candidates that we support. And I must admit that most of the candidates we seem to be supporting on these issues are Democrats.

Senator STEVENS. That teaches me to go to the floor to make a statement. I apologize for being absent when you said it before.

Your statement is very interesting. How long have you been a PAC?

Ms. REISS. We formed in August of 1984. And our most recent event, which was the Barbara Streisand concert in the summer, we did for the benefit of six different Democratic Senate candidates.

Senator STEVENS. I know better than to ask you any more questions. Thank you very much.

The CHAIRMAN. Thank you very much. We enjoyed your testimony, and you were very important to this hearing.

The next witness is Edward O. Fritts, president of the National Association of Broadcasters. We would hope that you could highlight, and the balance of your statement will be included in the record as if given, Mr. Fritts. You may proceed.

TESTIMONY OF EDWARD O. FRITTS, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. FRITTS. Thank you, Mr. Chairman, and we will be brief. As you mentioned, I am president and chief executive officer of the National Association of Broadcasters, and we appreciate the oppor-

tunity to be here. These hearings are one sign of growing concern about many aspects of modern political campaigns—their length, the manner in which campaign funds are raised and spent, the repellent negativism of many campaigns, and the distressingly low voter turnout.

NAB shares many of these concerns, and we have worked to improve many facets of campaigning. The materials attached to my testimony illustrate some of our activities. Much of modern campaigning is conducted via radio and television, and we take very seriously our commitment to serve the public in this ultimate privilege and duty of American citizenship, the selection of our elected representatives.

We recognize that many campaign reform proposals target us, because radio and television play so prominent a role in elections, and because our stations are licensed by the Federal Government. We will continue to press our case with Congress that campaign reforms should not blame the messenger, but should focus on the message. This is appropriate because broadcasters by and large have little control over how candidates choose to use our stations for their political messages, or the content of those messages.

I wish to address one specific aspect of modern campaigns—the growing perception that many political messages placed by candidates are highly negative and/or convey little in the way of substantive information to the voters.

To address these concerns, a number of Members of Congress have introduced bills that are based on the proposition that voters will be better informed and candidates will be less negative in their spots if the candidates must appear in a greater portion of their political messages. If the candidates, instead of hired surrogates, face the electorate on radio and television, then the voters could hear and see for themselves who the candidates are, what their views are, and who ultimately is accountable for the message being conveyed.

NAB agrees with that proposition. We have suggested that perhaps this is the simplest and most effective reform to alter the definition of a candidate's use of a broadcast facility, which, of course, triggers the lowest-unit-charge provision under Section 315.

A major problem with Section 315 here is the interpretation of the term "use." The FCC has held that when a candidate is identified or identifiable in a spot, then that spot is a use. In practice all it takes is a small picture of a candidate shown briefly at the end of a television commercial or an equally brief use of the candidate's voice at the end of a radio commercial.

We are going to show now a 30-second political spot which was run on the House side in the last campaign. This negative ad, by the way, did not work, because the person running it was defeated. But the purpose of our showing this is to indicate how easy it is for a candidate to use, under Section 315, television to earn the lowest unit rate.

[Showing of TV spot.]

As you can see, the use which qualified that was the size of a postage stamp and was only on for about 3 seconds at the very bottom or end of the commercial.

We are proposing that this definition of "use" be changed to require a more substantial candidate appearance before any of the benefits of Section 315 come into play. Senate bill 979, the Evans bill, embodies this idea. S. 979 would require a candidate to appear in 100 percent of a spot to be eligible for a broadcaster's lowest unit charge.

Now, we are not wedded to a one-hundred-percent-appearance requirement, but we do believe that a more substantial appearance than what you have just seen would be appropriate. Of course, Congress can make the appropriate determination on that.

Furthermore, NAB is not wedded to the idea that legislation is required to accomplish this objective. An FCC reinterpretation of the word "use" to require a more substantial appearance by a candidate should be sufficient. In the absence of legislation effecting this change, the Commission could implement this long-overdue reform on its own.

With these clarifications of our position, NAB supports the concepts embodied in S. 979. We applaud the sponsors of the bill. We recommend that this approach be used as a welcome improvement to the policies governing campaigns.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Fritts follows:]

STATEMENT OF EDWARD O. FRITTS. NATIONAL ASSOCIATION OF BROADCASTERS

Mr. Chairman and Members of the Rules Committee, my name is Edward O. Fritts. I am President and Chief Executive Officer of the National Association of Broadcasters ("NAB"), a trade association of more than 4,850 radio stations and 925 television stations including the major commercial broadcast networks. I appreciate the opportunity to testify today, on behalf of NAB.

The hearings being conducted by your committee are but one manifestation of growing concerns about many aspects of modern political campaigns -- their length, the manner in which campaign funds are raised and spent, the repellent negativism of many campaigns, and the distressingly low turnout of voters.

NAB shares many of these concerns, and our Association has actively worked to improve as many facets of campaigning as we are able to address. The materials attached to my testimony illustrate some of our activities. Much of modern campaigning is conducted via radio and television, and we take very seriously our commitment to serve the public in this ultimate privilege and duty of American citizenship -- the selection of our elected representatives.

NAB recognizes, at the same time, that many campaign reform proposals have targeted and will target us, because radio and television play so prominent a role in elections, and because radio and television stations are licensed by the Federal government. We will continue to press our case with Congress that campaign reforms should not blame the messenger, but should focus on the message. This is especially appropriate, we submit, because broadcasters by and large have little control over how candidates choose to use our stations for their political messages. I will expand upon this last point in a moment.

Before I get to the main focus of my testimony, which is S. 979, a new bill introduced by Senator Evans, I would like briefly to comment on S. 2, the Senatorial Election Campaign Act of 1987, as we understand this bill remains the primary framework for the Committee's deliberations. NAB appreciates the willingness of Senator Boren and the other sponsors of this bill to consider our views. NAB had serious reservations about the original Boren bill as it was introduced in the 99th Congress, but the sponsors were very willing to address our concerns, and we have no objections to S. 2 as it presently stands.

I am here today, however, to address one specific aspect of modern campaigns -- the growing perception that many political messages placed by candidates are highly negative and/or convey little in the way of substantive information to voters. Several quotes from two of your colleagues exemplify this concern. Senator Danforth said that "negative political campaigning is creating apathy and cynicism among the voting public and is distorting our electoral process." Senator Inouye described the 1986 campaign as a "spiraling arms race of increasingly demagogic and negative commercials which served to increase voter volatility, negative attitudes toward the candidates involved and to the political process as a whole."

To address these concerns, a number of Members of Congress have put forth proposals that are based on the proposition that voters will be better informed and candidates will be less negative in their spots if the candidates must appear in a greater portion of their political messages. If the candidates, not hired surrogates, face the electorate on radio and television, then the voters could see and hear for themselves who the candidates are, what their views are, and who ultimately is accountable for the message being conveyed.

NAB agrees with that proposition, and we have suggested that perhaps the simplest and most effective way to accomplish this end is to alter the definition of a candidate's "use" of a broadcast facility for political purposes.

Section 315 of the Communications Act provides that if a station permits a legally qualified candidate to use its facilities, then certain other provisions are triggered -- opposing candidates will be afforded equal opportunities for their messages, the station is prohibited from censoring any of these messages, and candidates will receive the station's "lowest unit charge" for those messages during a specified period prior to the election.

A candidate's "use", then, is the critical concept here. A major problem with Section 315, as it relates to this discussion, is the FCC's interpretation of the term "use". The FCC has interpreted "use", in effect, as "appearance". It holds that when a candidate is identified or identifiable in a spot, then that spot is a "use". In practice, all that is required is a small picture of the candidate shown briefly at the end of a television commercial or an equally brief use of the candidate's voice at the end of a radio commercial.

Once such a fleeting appearance is established, all the other provisions of Section 315 are triggered. The broadcaster's editorial discretion stops, and the candidate is free to air whatever message he or she chooses, however positive or negative, substantive or slick. The public, of course, may be left totally in the dark about who the candidate is, what the message was, and who they may hold accountable for what they just saw or heard.

NAB has proposed that this definition of a "use" be changed to require a more substantial appearance by a candidate before any of the benefits conferred by Section 315 are available to that candidate. S. 979, the Evans bill, embodies this idea. This bill would require a candidate to appear in 100 percent of a spot to be eligible for the broadcaster's lowest unit charge. NAB is not wedded to a 100 percent appearance requirement -- we believe that the requirement of a substantial appearance, in 50 percent or more of the spot, should be sufficient to provide the desired reforms. Congress, of course, can make the appropriate determination. Furthermore, NAB is not wedded to the idea that legislation is required to accomplish this objective. An FCC reinterpretation of "use" to require a more substantial

appearance by a candidate should be sufficient. In the absence of legislation effecting this change, the Commission should implement this long-overdue reform.

With these clarifications of our position, NAB supports the concepts embodied in S. 979. We applaud the sponsors for introducing the bill, and we recommend this approach to Congress as a welcome improvement in the policies governing campaigns.

*Adopted by the
National Association of Broadcasters
Board of Directors
January 17, 1986*

The Role of Broadcasters in the Political Election Process

Congress today is increasingly concerned about several aspects of the election process which could bear directly on the First Amendment rights of radio and television broadcasters. The purpose of this White Paper is to review those concerns and attempt to elevate the level of consciousness among broadcasters as to the voluntary steps they may take to make the election process more informative and responsive to the needs of their listening and viewing audiences.

Pending Legislation

Several bills manifest the views of many in Congress on this subject. S. 1310 would require a station to provide free response time to any candidate who is attacked in an ad run by his or her opponent, unless the attack is made directly by the opposing candidate himself or herself. Additionally, S. 1310 would require stations to provide free time in response to the airing of any broadcast in which someone other than a candidate or authorized committee endorses or opposes a candidate for Federal office. This provision was also included in S. 1806, the so-called Boren Amendment, which reached the floor of the Senate in December. House counterparts of S. 1310 and S. 1806 have been introduced. Senators Rudman (R-NH) and Inouye (D-HI) will soon introduce a bill requiring paid TV and cable political broadcast segments of ten minutes or less to conform with strict content provisions calling for speakers to address the camera directly. The speaker and the purchaser of air time would have to be clearly identified.

A look at the record of hearings held thus far on S. 1310 provides the flavor of the views held by those espousing campaign reform. Here are some of the many assertions made:

- Campaigns are too expensive, and the single most expensive feature is media advertising, particularly television.
- Campaign costs have tripled since 1960 and doubled since 1972.
- Between 1978 - 1982, the total cost of House and Senate races rose from \$158 to \$300 million.
- In 1984, 70% of what was seen or heard in the political campaign was contained in 60- or 30-second commercials.
- In 1974, media cost was \$.12 per vote, compared with \$3.46 per vote in 1984, in the five most expensive Senate races in those years.
- Negative advertising is the most dangerous element in politics today.
- Negative advertising has become standard procedure for most campaigns.
- Negative ads have an adverse impact on voter perception of the political process, creating apathy, cynicism and low voter turnout.
- Negative attacks by PAC's and other independent groups are made without any accountability or need to stand before the voters.
- In 1984, the three largest independent PAC's spent over \$1 million on political ads. One of these PAC's produced 20 different commercials.
- Lack of free response time to answer independent attacks forces higher campaign costs.
- Even candidates who "benefit" from independent attacks can be hurt by being held accountable.
- There is little hope for self-regulation by the broadcast industry.

NAB believes that the pending proposals on political broadcasting are of questionable constitutionality. We will vigorously oppose these attempts to infringe on the rights guaranteed the broadcast press under the First Amendment. Further, our long-term goal is the elimination of Sections 312 and 315, the "reasonable access" and "equal opportunities" provisions of the Communications Act. We believe these requirements are an unconstitutional abridgement of broadcasters' First Amendment rights.

Discussion

While defending our Constitutional rights on these issues, we cannot ignore the role broadcasters play in the political process. Our record has been a good one. But we can do better. And expanded public support for broadcasters' First Amendment rights may be the result.

Let's examine the ways in which we broadcasters might respond to the concerns being addressed by Congress, beginning with negative advertising. We can dispose quickly of the issue of negative ads in which the candidate himself makes the attack or makes an appearance in an authorized ad in which his opponent is attacked. Section 315 precludes censorship where the candidate makes an appearance. Thus, broadcasters are currently powerless to make any judgment as to such ads. The same prohibition applies to paid political programs in which the candidate's appearance plays an integral role.

Ads or programs in which the candidate does not make an appearance are another matter. They do not fall under Section 315 and its no-censorship constraint. Broadcasters are not common carriers. We do not have to air any paid political material which falls outside the purview of Sections 315 and 312. Individual station judgments govern here. Are we making those judgments?

In dealing with material which is not covered by Section 315, it may be helpful for us to distinguish those ads which are authorized by a candidate from those which are sponsored by a group independent from any campaign. Stations may generally choose to exercise a "hands off" policy with regard to authorized ads, presuming that the ad is part of a candidate's overall strategy into which the station should not inject itself. We should recall, however, that ads which are not "uses" under Section 315 do not have the protection from libel suits conferred on ads in which the candidate appears by voice or likeness.

Further we should remember that licensees are responsible for everything they air. If a product ad is false, misleading or deceptive, the station may have to answer to the FTC or FCC. While there is no "truth in political advertising" law, why not ask ourselves whether a political ad would appear on our stations if subjected to the same standards applied to product ads. If a candidate wants certain extreme material on the air, perhaps it is best that he or she be directly associated with the material, at least to the degree that he or she appears on the ad in a way which makes it a "use" under Section 315.

Independent material, particularly that sponsored by PAC's, is at the heart of Congressional concern. Indeed, the effect of S. 1310 is to discourage use of any of this paid time by requiring broadcasters to provide free time in response. This in itself is a form of governmental judgment in a very serious First Amendment area. But once again, we are not common carriers and have every right to determine whether this material should be broadcast.

Some stations may eschew this editorial role and air any independent paid political matter which crosses their threshold. We urge those stations, and their corporate management, where appropriate, to examine what the proper exercise of the editorial function in this area might be. Of course, we recognize that rejection of all independent material can also have a negative impact on our communities. Broadcasters cannot assume that independent political voices should have no input into the local political process. Numerous factors must be considered, e.g., is the material merely reflecting a personal vendetta; is it unfair or patently false; is the sponsor raising issues of no concern to the local audience or are they raising important local issues the candidates have chosen to ignore? Finally, we emphasize that as with all programming, this is an area in which each station must use its individual judgment about what is to go on the air.

Dealing with paid independent political views is not easy. Stations will and do vary significantly in their approaches. But deal with it we must. We should not be mere conduits for the irresponsible and destructive.

The other major area where we affect the political process is in the broadcast of political debates, interviews and other programs which serve to inform the audience on the views and qualifications of the candidates. Our record on this score is a good one.

An NAB survey of 201 commercial TV stations conducted after the 1984 elections is indicative of this record. Nearly half (45%) of the stations offered to sponsor debates and 31% actually did sponsor them. Another 10% aired debates sponsored by outside groups such as the League of Women Voters. (A sour note revealed by the survey was that 55% of the stations which offered to sponsor debates were turned down at least once by one or both candidates.) Aside from debates, one-third of the stations conducted interviews of more than five minutes and 72% aired other news and information covering the various elections. Some type of "get out the vote" PSA was used by 80% of the stations and 63% produced their own PSA's for this purpose. Finally, 14% actually organized community outreach programs such as voter registration drives.

This study reflects well on our entire industry, for we believe it is indicative of radio's contribution too. But we can and should do much better.

By increasing the number of radio and television stations which air political debates, interviews, news series and other programming designed to elicit the kind of information an informed electorate needs and deserves, we can enhance and dignify the election process. Every station should be a contributor to the extent possible.

Criticism of spot announcements as an inappropriate vehicle for informing the public on the issues will no doubt continue. However, that is a matter largely under the control of the candidates themselves. They opt for that vehicle and they select the content.

Conclusion

We are keenly aware of the concerns this White Paper will engender. Broadcasters are being asked to exercise their editorial judgment to the fullest, both as to the airing of certain paid political material and the production and broadcast of local political programming. Yet we reach a point where our editorial discretion abruptly stops and the existing governmental rules and laws take over dictating how we will treat the subject from that point forward.

One may ask why should I even bother sticking my neck out and immersing myself in this difficult editorial role? Why not just do what the government mandates and ignore the rest of the picture? We have two responses. Primarily, we should do it because as public trustees we owe it to our communities. And secondarily, by exercising editorial discretion and increasing a station's involvement in the political process, we help to prove to Congress the fallacy of maintaining what are essentially outdated, discriminatory and unconstitutional political broadcasting laws.

Broadcasters and Elections:

**YOU'VE
GOT
WHAT IT
TAKES**

Taking the Lead

The recently concluded Democratic primaries demonstrated the pivotal role that broadcasting has assumed in elections. All available opinion research confirms that the public increasingly relies on broadcasting for its election news and information. Moreover, it is estimated that political campaigns will purchase over \$225,000,000 in radio and television advertising this year.

Recent action at the Federal Communications Commission allows broadcast stations to sponsor and conduct political debates from their studios among major candidates without third party participation, such as the League of Women Voters.

The National Association of Broadcasters has launched an election year campaign titled "You've Got What It Takes." The slogan reflects that broadcasters have what it takes as the prime source of news and information and that the public has what it takes — the right to vote.

Promotional campaigns aiding the political process, therefore, are in your community's, the nation's, your station's and the industry's best interests.

A complete promotional kit, adaptable for local use, is available and includes a debate manual and other materials.

Success depends on active station participation.

Kits Include:

Broadcasters and Political Debates: An Outline
for Election Year Use

New 24-page booklet suggests the basic guidelines for conducting lively political debates on the local level.

Political Broadcast Catechism
(revised)

The latest rules, regulations and interpretations governing political broadcasting.

Political Broadcast Handbook
(revised)

Concise summary of FCC rules on the Fairness Doctrine.

A Candidate's Guide to the Law of Political
Broadcasting (revised)

Introduction to the complex laws related to political broadcast advertising.

"You've Got What It Takes" Slide

Adaptable to any television station call letters, this can be used along with accompanying voice-over copy.

Promotional Item Order Form

"You've Got What It Takes" balloons, bumper stickers, mugs and T-shirts are but a few of the ways to promote your station during election year '84.

Election Year Clip Art

Prepared for use on all printed material, station promotion departments can use it on everything from letterhead to billboards.

NATIONAL ASSOCIATION OF BROADCASTERS

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(202)293-3570IMMEDIATE RELEASE

202/83

ANNUAL CONVENTION TO OPEN
VOTER INVOLVEMENT CAMPAIGN

WASHINGTON, Dec. 14. -- The National Association of Broadcasters' 1984 convention will be the kick off for its national voter campaign and the convention theme will be "You've Got What It Takes." The 62nd annual meeting and concurrent broadcast engineering conference will be held April 29 - May 2 at the Las Vegas Convention Center.

The goal of the campaign is to get people involved. NAB recognizes that broadcasters have a special responsibility in the electoral process: the public relies on local stations for most candidate and issue information. Broadcasters will emphasize to the American people that in the electoral process they've got what it takes to make it work.

NAB will help stations to get their communities active in the upcoming election season. "How-to" kits to be sent to members will detail voter activities around the country, offer suggestions that have worked for other stations, show how to use the campaign as a promotional tool and tell what election year information is available where.

Additionally, since stations now can sponsor candidate debates, a "debate model" will be provided which will spell out the basics of staging, negotiating, pitfalls and formats.

The NAB serves a membership of over 4,500 radio and 700 television stations, including all the major networks.

- 30 -

1a, 1b, 2, 2a, 3a, 4, 5, 8, 9,
10, 15, 16, 17, 18, 21, SM1,
SM3, SM4, SM6, SM7, SM10

Contact: Bob Hallahan (202) 293-3570

The CHAIRMAN. Thank you, Mr. Fritts. Let me ask you a couple of questions. I asked the previous witness a question regarding negative advertising. You see it in every campaign and it's growing and growing.

Would you support a provision requiring a candidate who makes reference to his or her opponent in an advertisement, to make that reference in person and not through parties?

Mr. FRITTS. Yes, sir, we would.

The CHAIRMAN. Would you comment on a requirement that the identification of a sponsor of an independent advertisement remain on the screen clearly visible throughout the ad.

Mr. FRITTS. I don't know that it has to be a hundred percent of the time, but clearly we think that identification is important and should be easily discernible by all the viewers and-or listeners.

The CHAIRMAN. In the ad you just ran, my name could have been at the bottom of it, or Senator Stevens', and that would have been construed as an independent expenditure.

Mr. FRITTS. That's correct.

The CHAIRMAN. So how do we handle that? The disclaimer, as I recall, had the candidate's little bitty picture down in the corner for three seconds, and that's the media way of doing it. But my name could be on there and that would be an independent expenditure. I could spend hundreds of thousands of dollars and not much could be done about it.

Mr. FRITTS. Independent advertising can be edited or the broadcaster can ask the people purchasing the independent advertising to change the script, whereas that cannot be done if you yourself or an agent on your behalf approached the station to buy time. So the changes themselves would have some editorial discretion over independent advertising as opposed to candidate advertising.

The CHAIRMAN. Well, with Senator Stevens' scrutiny of 1986, along with mine, there was very little consideration of editing any kind of independent advertisements in 1986, even though they may have had the ability. I doubt seriously if there was much editing of those independent ads.

Mr. FRITTS. I'm not familiar with the particular case that Senator Stevens pointed out, but I suspect he's correct.

The CHAIRMAN. There's more than one case, when you begin to look at the total picture. So the prerogative to do that exists, but will they use it?

Mr. FRITTS. That would have to be left up to the individual station absent some form of legislation, or guidelines by the Federal Communications Commission.

The CHAIRMAN. Well, aren't we intruding again? Won't that be the cry if we begin to lay out legislation placing requirements on stations?

Mr. FRITTS. I think you have to balance the First Amendment considerations with that, but, as you know, Section 315 obviously contains many special provisions that broadcasters must adhere to already in terms of their acceptance of political advertising and the airing of political advertising.

The CHAIRMAN. Would you prefer that the "use" definition be accomplished by FCC regulation rather than by statute?

Mr. FRITTS. I think it would be the more preferable way to go, but obviously the Congress certainly has the prerogative to do that, and, if it's your choice to legislate on that matter, we would support it.

The CHAIRMAN. Senator Stevens?

Senator STEVENS. I don't have any problems with your suggestions, but I wonder about the lowest-unit-rate concept itself. The current law, as I understand it, says you are eligible for the lowest unit rate charged for that particular time slot at the time.

Mr. FRITTS. That's correct.

Senator STEVENS. There have been suggestions that there ought to be a frame of reference for a year or the election period, so that the lowest unit rate prevailing in a period, a broader period, would apply. What would you say about that?

Mr. FRITTS. I think the Commission has the prerogative to adjudicate that a station can't arbitrarily raise rates immediately prior to an election. I think any Washington counsel—when I was operating stations, our Washington counsel would advise very strongly against any rate increase 60 days prior to a campaign.

Senator STEVENS. But if you look at the expenses of campaigns, it has in fact been the expense of television advertising that has escalated. When I first ran for office, as I've said before, my expenses were \$38,000; the last time it was \$1.1 million. The major change was advertising; and the major change was the advent of television advertising.

Mr. FRITTS. I think the witness just prior to this discussed that political consultants and pollsters have a lot to do with where candidates spend their money. You should realize that the rates you pay on the lowest unit rate are the same rates that the advertisers who normally advertise on those stations are paying. The difference is that you do not have to buy in large quantities to earn the lowest rates. There are some systems in television now which have predominantly taken over, in the grid card system, where practically every half hour is an auction, if you will, to determine the cost of rates. And many stations price their rates accordingly. And that has confused this issue somewhat.

Senator STEVENS. Well, I should add hastily that it's not just solely the air time that's increased; it's the cost of preparation and the cost of the distribution of television advertising that has increased. We see candidates change their ads in response to negative ads or issue ads three or four times a week. In the good old days you were lucky to have one spot and use it through the whole campaign. Now people are constantly changing those ads, and that requires a statewide distribution mechanism, it requires the use of overnight transportation and air charges. This whole concept of advertising has increased to the point where it is really, I think, the major increased cost in campaigns.

Mr. FRITTS. I think you should—and I know you do—recognize that the stations which operate in the local communities around the country are but conduits for that advertising which is brought to them. We cannot in any way alter your announcements or your opponents' announcements, and we wouldn't propose that we would when they are brought to us. However, we sell to you at the lowest unit rate which is applicable to other advertisers in the

market, and the cost of production and the cost that you alluded to of distribution are certainly attendant to a campaign, but should not accrue to the detriment of the local radio and television station.

Senator STEVENS. Let me ask you a last question, and that is—I've had several colleagues remind me of the British system. They ask why we just don't put into effect the British system. I know the answer, but I'd like your comment. You know that the British system is that each candidate is allowed a certain amount of minutes on the television stations that can be seen in that candidate's district, free of charge—but they are limited to that; they can use no more time, they cannot buy any more. What's wrong with that system in the United States?

Mr. FRITTS. Well, let me just give you some facts that I think have gone unnoticed perhaps in this discussion. In the 1986 elections, 56 percent of the television stations offered free time to candidates for debates. Half of those stations, or nearly half of them—46 percent of the stations—were turned down on at least one of those debates by one of the candidates; 45 percent of the stations offered the candidate an opportunity to debate, and they failed to hold those debates because the candidates refused to participate. The broadcasters are willing to do our part toward communicating the message to the American people. Unfortunately, apparently, the forum didn't suit one or more of the candidates to participate in that. Ninety percent of the stations we surveyed covered congressional candidate forums, and 90 percent covered gubernatorial and other statewide candidate forums.

The broadcasters are reaching out to attempt to be involved and get the electorate involved in the electoral process.

I think one of the things that all of us recognize is that negative ads are a turn-off to many people, and, as such, they get soured on the political process, and, because of that, I think Senator Ford, the Chairman, has come up with an idea, along with Senator Evans, to perhaps let the person who is doing the accusing do it in his own voice and his own face so that he will be totally accountable to the voters for those actions.

Senator STEVENS. Thank you very much, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you, Mr. Fritts. We may be asking you for additional information about the industry you represent.

Mr. FRITTS. We'd be glad to provide it. Thank you, sir.

The CHAIRMAN. The next witness is Ms. Ellen Miller, executive director, Center for Responsive Politics. You may submit your full statement for the record, and highlight it at this time if you wish. Please proceed, Ms. Miller.

TESTIMONY OF ELLEN MILLER, EXECUTIVE DIRECTOR, CENTER FOR RESPONSIVE POLITICS, ACCOMPANIED BY HERB K. SCHULTZ, CAMPAIGN FINANCE PROJECT DIRECTOR, CENTER FOR RESPONSIVE POLITICS, AND PAUL HOFF, ATTORNEY, WELLFORD, WEGMAN & HOFF

Ms. MILLER. Thank you, Mr. Chairman, I will submit the statement for the record. I have a few comments I'd like to make this

morning. I would like to introduce Mr. Paul Hoff of the law firm Wellford, Wegman & Hoff, who is the Center's counsel, and, on my left, Herb Schultz, who is the director of the Center's Campaign Finance Study Project.

The Center appreciates the opportunity to testify before the Committee on an issue of campaign finance reform. The Center was founded in 1983 as a bipartisan public interest research group by former Senators Frank Church and Hugh Scott. The focus of the organization has been to look at issues which have undermined the public confidence in Congress. The Center has completed extensive research in the area of campaign finance. Our campaign finance research has been conducted in two areas: Federal campaign spending and "soft money."

We would specifically like to address one of those issues today, that of "soft money." The Center has undertaken an enormous amount of research on "soft money" since its first use in 1980. The collection and use of "soft money" increases in sophistication with every election cycle. We have detailed the history of these uses in a monograph published by the Center in 1985, copies of which have been sent to you.

The public's confidence in the effectiveness and integrity of the Federal election laws is increasingly threatened by the growing involvement of the national party committees, their affiliated state organizations, corporations, labor unions and individuals in the collection and distribution of large unregulated and often undisclosed amounts of "soft money." The problem is that such funds can be and are, we believe, spent in ways that assist Federal candidates and in ways that free up so-called hard money, that is, money contributed in compliance with Federal requirements, for use in Federal races.

"Soft money" involves a particularly ambiguous area of existing Federal election law. Under current FEC reporting requirements and interpretations, it may be hard to prove that the actual intent of individuals and organizations contributing this money, or that the actual use of this money, is to influence a Federal election.

There are no consistent state reporting requirements to adequately make up for the lack of disclosure at the Federal level. There is no centralized disclosure for "soft money." There is no regular disclosure of allocation formulas used for activities that benefit Federal and state and local candidates. Therefore there is no practical way for the FEC or the public to review the reasonableness of a state party's allocation of expenses to ensure that "soft money" is not being used in connection with Federal races. Even though the evidence of misuse of "soft money" is difficult to pin down, it does not make "soft money" any less serious a problem. As a practical matter, most people would agree that "soft money" solicited by national party organizations, contributed by donors anxious to curry favor from national political leaders and often used in states where close Federal elections take place, means that the primary purpose of "soft money" is to influence Federal races, not state or local races or activities. Indeed, one fundraiser referred to the use of "soft money" as "a little dance which we dance around the law."

Some officials and contributors have openly stated that "soft money" is intended to help Federal candidates. Minnesota department store heir Mark Dayton, who in 1984 gave \$100,000 to the DNC individual account, a "soft money" account, told the Minneapolis Star and Tribune, "The purpose (of the contribution) was to assist the Mondale campaign."

In Nebraska, GOP chairman Kermit Brashear, admitted to the Omaha World Herald that his party would provide GOP senatorial challenger Nancy Hoch with \$150 to \$190 thousand of campaign services, to be financed by "soft money" from the RNC and the NRSC. State disclosure reports did show the state committee in fact received \$186,000 from the two national committees.

The Center's research into the uses and abuses of "soft money" is continuing into the 1985-86 election cycle. We are now focusing our research on "soft money" contributions in five states. Although we are unable to draw any firm conclusions, since our work is in its preliminary stage, we already note patterns of "soft money" contributions that appear questionable. What appears to be "soft money" entered some of the states with key Federal races in the crucial final weeks of the campaign season. Corporate checks to state party committees, for example, arrived very close to the election in some of these states.

Our current research efforts also demonstrate the impracticability of our relying upon state disclosure laws to reveal the size, source, and use of "soft money" contributions. Finding information about the contributions, the expenditures, and the use of "soft money" is a paperwork nightmare which effectively screens the public from knowing by whom and why this money is contributed.

The FEC has refused on a number of occasions to act to bring "soft money" contributions and expenditures under its jurisdiction or to clarify the rules for its use. The FEC's unwillingness to act quickly and decisively has undermined the public's right to know who gives political money that may be affecting Federal elections. In the absence of action by the Commission, there is little or no check on how the party committees allocate activity expenses, such as get-out-the-vote and voter registration, between Federal and non-Federal races, and how much information these committees disclose about their "soft money" activities, and to whom.

In the light of FEC's unwillingness or inability to act, the Center recommends that Congress take upon itself the job of enacting legislation that would, first, require national party committees and their national affiliates to report separately all contributors to their non-Federal accounts, including building funds, and all expenditures from such funds, including transfers to party committees at the state and local level; second, direct the FEC by legislation to act within 180 days to issue new allocation rules that recognize the importance of Federal races in expenditures that benefit both Federal and non-Federal candidates, and require, in any such case, that the allocation percentage used by a state or local party, and the factual justification for it, be reported to the FEC so the FEC and the public can determine whether the allocation of expenses was reasonable; and, third, prohibit all candidates for president from establishing or soliciting "soft money" for national non-Federal accounts. We suggest this prohibition because the likeli-

hood is great that any person who contributes money to such a fund as a result of an appeal from a presidential candidate is in part motivated by a desire to help that candidate.

In conclusion, let me say that S. 2 directly addresses major problems in today's campaign finance system—spending levels, independent expenditures, the role of PAC's, media costs, bundling. It addresses all but one, and that is the role of "soft money." If "soft money" is not addressed by the Congress, we believe it will be a serious oversight, for the problem will get worse, not better, in light of the other reforms which you are considering.

We wish to thank you for the opportunity to testify, and we'd be pleased to answer your questions.

[The prepared statement of Ms. Miller follows:]

STATEMENT OF ELLEN S. MILLER, CENTER FOR RESPONSIVE POLITICS

Introduction

Chairman Ford and Members of the Rules and Administration Committee, the Center appreciates the opportunity to testify before the Committee on an issue of campaign finance reform. The Center, founded in 1983 as a public interest research group by former Senators Frank Church (D-ID) and Hugh Scott (R-PA), has done extensive research in the area of campaign finance. Other research by the Center involves issues concerning congressional operations, ethics, and activities of non-profit organizations. The Center is supported by grants from a wide range of private foundations.

As a small public interest research organization, the Center has focused its campaign finance research in two areas: federal campaign spending and "soft money." I have taken the liberty of attaching to my testimony two of the Center's campaign finance related monographs -- Campaign Spending Out of Control (2nd Ed.) and Soft Money - A Loophole for the '80s -- for inclusion in the record. We would like to specifically address one of these issues today -- the use of so-called "soft money", or nonfederal funds, in political campaigns.

Public confidence in the effectiveness and integrity of the federal election laws has become increasingly threatened by the growing involvement by the national party committees, their affiliated state organizations, corporations, labor unions and individuals, in the collection and distribution of large, unregulated, and often undisclosed amounts of money for administrative expenses of state and local parties and for state and local party building activities such as polling, voter registration and get-out-the-vote efforts. Such sums are termed "soft" or nonfederal because they may not be contributed to federal campaigns. The problem is that such funds may also be spent in a way that assists federal candidates and in a way that frees up additional sums of money contributed in compliance with federal requirements (so-called hard money) for use in federal races.

Unchecked by federal regulation, "soft money" threatens to undermine the campaign finance laws enacted to regulate campaign spending. The use of these funds increases in sophistication with each election cycle, as the techniques are refined and as potential donors become more aware of the opportunity to extend their influence.

"Soft money" admittedly involves a particularly ambiguous area of existing federal election law. Under current FEC reporting requirements and interpretations, it may be hard to prove that the actual intent of individuals and organizations contributing this money or that the actual use of this money is to influence a federal election. Therefore, it may in turn be difficult to prove that the contribution and expenditure of the money must comply with federal law. In addition, no consistent state reporting requirements exist to adequately make up for the lack of disclosure at the federal level. When a state party engages in an activity, such as a get-out-the-vote campaign which benefits both federal and nonfederal candidates, it must allocate the costs of the activity between federal and nonfederal purposes and make sure that any "soft money" is used only to finance the portion of the cost attributable to the nonfederal part of the activity. But under current FEC practices, there is no practical way for the FEC or the public to review the actual reasonableness of the state party's allocation of expenses between the federal and nonfederal accounts and to ensure that "soft money" is not being used in connection with a federal election.

But even though the evidence of misuse of "soft money" must by necessity be circumstantial, it does not make it any less serious of a problem. As a practical matter, most people would agree "soft money" solicited by national party organizations, contributed by donors anxious to curry favor from national

political leaders and often used in states where close federal elections take place, means that the primary purpose of "soft money" is to influence federal races, not state or local races. The Federal Election Campaign Act, which imposes a \$20,000 annual limit on individual contributions to national party committees and a \$25,000 limit on direct contributions to candidates, does not contemplate or expect gifts of \$100,000 by a few wealthy individuals for off-budget accounts established and maintained by national party committees.

Some officials and contributors have openly stated that "soft money" is intended to help federal candidates. In 1984, Mitch Daniels, then Executive Director of the National Republican Senatorial Committee, was asked why his committee's nonfederal money was being sent only to state party committees where there were Senate elections. Daniels said "we're only here for one purpose," obviously referring to his committee's role in electing Republicans to the Senate. Minnesota department store heir Mark Dayton, who in 1984 gave \$100,000 to the Democratic National Committee's Individual Account -- a "soft money" account -- told the Minneapolis Star and Tribune, "The purpose [of the contribution] was to assist the Mondale campaign."

Failure of the Federal Election Commission to regulate these contributions feeds public discontent about our election laws. It helps explain why recent polling data, such as a 1986 poll by Civic Service, Inc., showed a majority in favor of some type of change in the present system.

The phrase "soft money" was actually borrowed from a term used to describe another kind of political money. Originally, "soft money" referred only to corporate and labor treasury funds which could be legally used to support the administrative and fundraising expenses of a voluntary segregated political fund -- a PAC -- maintained by that organization. Since 1976, however, "soft money" has evolved into an umbrella term describing any political money not regulated by federal law.

The origins of "soft money" as it is known today dates from experiences with the first publicly financed presidential election in 1976. Local party officials complained after the elections that not enough of the public funds had been available for local "grassroots" activities, such as bumper stickers and sample ballots, largely because federal candidates preferred to spend their limited public funds on media efforts. In response, Congress adopted numerous technical changes to the FECA in 1979, adding provisions on the role of state and local parties in presidential elections. These amendments provided an inadvertent impetus for "soft money", as Democratic and Republican Party

lawyers were alerted to the possibility that they could raise and use nonfederal funds to help state and local committees defray overhead or election activities, attributable to state and local races, without violating federal law.

1980 - 1983: "Soft Money" Comes of Age

"Soft money" came of age in 1980 as a potent, multi-million dollar factor in the presidential elections as the Republican party collected large donations from sources previously thought to be restrained by federal law. Maxwell Glen, in his article "Republicans and Democrats Battling to Save Big Bucks For Voter Drives", citing the best available figures on the 1980 election, said that the Republican National Committee raised \$9 million in "soft money" at the national level, while helping the state and local affiliates to collect another \$6 million. According to the same article, the Democrats raised about \$4 million in "soft money" in 1980. In most cases, this "soft money" was contributed directly in critical states by individuals and organizations at the suggestion of national party fundraisers.

The success of "soft money" in the 1980 Presidential race led to its further use in the 1982 congressional elections. 1982 saw the establishment and refinement by the national party committees of central depositories for "soft money" funds. Depositing money in national party nonfederal accounts had two advantages over previous "soft money" operations. First, such accounts acted as central financial clearinghouses of the money, allowing national party officials greater control to select which races were more critical to them. Moreover, the nonfederal accounts were more convenient for the parties because they did not have to send back any checks from corporations, unions or individuals impermissible under federal election law. Instead, the parties could deposit the money into a "nonfederal" account.

The clearinghouse's second advantage over earlier operations was to guarantee that the sources of funds were often undisclosed even at the state level. Under the 1980 system of suggesting to a contributor that he send money to a targeted state that required disclosure, the name of that contributor would likely be disclosed in state records. But under the clearinghouse system, the only names disclosed in most cases are those of the clearinghouse accounts, such as the "DNC Individual Account" or the "Republican State Elections Committee".

The Center studied one 1983 election in detail to better understand the role of "soft money." Involved was a special election in Washington State to fill the U.S. Senate seat vacated by the death of Senator Henry Jackson.

Reports filed with the Washington State Public Disclosure Commission reveal "soft money" transfers between the national and state parties just prior to this critical election. The Democratic National Committee sent \$10,000 and \$20,000 gifts to the Washington Democratic Party. The Washington Republican Party received a total of \$67,000 from the Republican National Committee.

The circumstances surrounding the uses of "soft money" funds in the 1983 Washington State election are summarized as follows:

- In November, 1983, there were no elections for federal office except the one to fill the vacant U.S. Senate seat for the State of Washington;

- There were no state-wide elections held at the nonfederal level in November, 1983. A total of 9 counties held 28 partisan contests at the county level for such offices as assessor, auditor, and sheriff. The Republican Party was represented by a candidate in only 20 of these 28 local races. Additional city and local races were non-partisan in nature, as were two judicial races held at that time.

- Except for the U.S. Senate race, there were no partisan elections of any type in 30 of the counties, or over 75% of the counties.

- To fund these 28 partisan contests, the 1983 state parties' overall spending for nonfederal elections reached roughly 70% or more of their spending in 1982, a federal election year. By comparison, 1982 featured 9 federal races and about 120 partisan contests for state offices, and hundreds more at the community level.

The pattern of contributions and spending and the number of state or local contests and their importance vis-a-vis the federal contest in Washington state suggests strongly that the money was donated for the purpose of influencing a federal election.

Unfortunately, the FEC declined to take action based on the complaint the Center filed with the agency concerning the use of "soft money" in this special election. Nor is this the only occasion on which the FEC has failed to act with regard to "soft money". Common Cause, in November 1984, asked the FEC to investigate "soft money" practices and issue new regulations closing the "soft money" loophole. The FEC dismissed this petition. Common Cause has since filed a suit in Federal District Court against the FEC challenging their decision not to initiate a rulemaking on "soft money".

1984: "Soft Money" Unbound

In the 1984 election, much of the Democratic "soft money" effort was organized around the presidential campaign. The Democrats established two national party soft money organizations - The Victory Fund and America for Mondale-Ferraro. According to press reports, the goal of these groups was to raise \$30 million, though there is no way of knowing if that figure was met. Both Mondale and Ferraro openly solicited "soft money" funds. The Victory Fund sent a solicitation letter signed by Geraldine Ferraro, telling potential contributors "Although presidential campaigns are publicly funded, a critical advantage will go to the side whose party committees can raise a larger war chest for media campaigns, voter registration and get-out-the-vote efforts."

The Republicans, well endowed with funds from earlier efforts, mounted no special "soft money" efforts in 1984 according to press reports. Still, Republican nonfederal accounts remained active. According to a press report, the Republican National State Elections Committee gathered about \$5 million, the Victory Alliance and Leadership '84 organizations gathered perhaps as much as \$14 - \$19 million.

Republicans use of "soft money" in 1984 almost led to an FEC complaint by the Democratic National Committee against the National Republican Senatorial Committee. The Center's own research subsequently confirmed that during 1984, the National Republican Senatorial Committee funneled almost \$925,000 of its own funds into state coffers. All of this money appears to be "soft money". Often the NRSC's contributions to finance nonfederal political activities coincided with activities that would benefit the party's Senatorial candidates. For example:

- In Michigan, the state party earmarked \$35,000 to \$40,000 to air a series of radio commercials attacking incumbent Democratic Senator Carl Levin. The ads were broadcast in April, 1984, at about the same time the NRSC sent a \$40,000 "party-building" contribution to Michigan Republicans.
- In Arkansas, the NRSC sent \$40,000 to the Arkansas Victory Fund '84. Barely a week later, the fund paid \$44,791 for a direct mail campaign aimed against incumbent Democratic Senator David Pryor.
- In West Virginia, the state party spent \$21,733 for 64 billboards through the state attacking Democratic candidate Jay Rockefeller's record as a governor. At about the same time, the NRSC sent \$21,450 to the West Virginia Republican Party.
- In Nebraska, state GOP Chairman Kermit Brashear admitted to the Omaha World Herald his party would provide GOP Senatorial challenger Nancy Hoch with \$150,000 to \$190,000 worth of campaign

services to be financed by the RNC and the NRSC. State disclosure reports did show the state committee in fact received \$186,000 from the two national committees.

Ultimately, the DNC and NRSC worked out an agreement in October 1984 whereby they agreed to notify each other 48 hours before state transfers of hard or soft money took place, rather than file complaints against each other at the FEC.

1986: The Loophole Continues

The Center's research into the uses and abuses of "soft money" is continuing in the 1985-1986 election cycle. We are now focusing our research on "soft money" contributions in five states. Although we are unable to draw any firm conclusions since our work is in its preliminary stage, we already note patterns of "soft money" contributions that appear questionable. What appears to be national party "soft money" entered some of the states with key federal races in the crucial final weeks of the campaign season. Corporate checks to state party committees, for example, arrived very close to the election in these states.

Our current research efforts also demonstrate the impracticability of our relying upon state disclosure laws to reveal the size, source, and use of "soft money" contributions. For example:

- One must not only pour over inadequate state records, but federal records also have to be examined closely to make sure that money was indeed "soft."
- Anyone wishing to learn what kind of "soft money" activities occurred in one state has to collect dozens of state reports. However, not all states require disclosure and many that do require it often do not require complete disclosure before an election. Beyond these problems, most "soft money" operations can and do avoid disclosing their contributors.
- Available state records frequently cite the name of a party committee, corporation or labor union, but do not adequately identify the kind of contribution made or the source of the contribution (i.e. PAC, direct treasury money, or a federal or nonfederal account). Even knowing the identity of the donor may not disclose whether a contribution was "hard" or "soft" since many federal PACs have set up separate nonfederal funds for individual states which are all operated out of one office.
- Information from the organizations themselves is often unavailable to fill in holes left by the incomplete reporting requirements at the federal and state level. Many groups are reluctant to volunteer additional information about their contributions.

Recommendations of the Center

The FEC's unwillingness to act quickly and decisively has undermined the public's right to know who gives political money that may be affecting federal elections. In the absence of action by the Commission, there is little or no check on how party committees allocate activities, such as get-out-the-vote and voter registration between federal and state and local races, and how much information these committees disclose about their "soft money" activities, and to whom. In light of the FEC's unwillingness or inability to act, the Center recommends that Congress take upon itself the job of enacting legislation that would:

- Require national party committees and their national affiliates to report separately all contributions received to its nonfederal accounts, including building funds, and all expenditures from such funds, including transfers to party committees at the state and local level.
- Direct the FEC, by legislation, to act within 180 days to issue new allocation rules that recognize the importance of federal races in the case of expenditures that benefit both federal and nonfederal candidates, and require, in any such case, that the allocation percentage used by a state or local party and the factual justification for it be reported to the FEC so the FEC and the public can determine whether the allocation of expenses was reasonable.
- Prohibit all candidates for federal office from establishing or soliciting soft money for national nonfederal accounts. We suggest this because the likelihood is great that any person who contributes money to such a fund as a result of an appeal from a federal candidate is in part motivated by a desire to help that federal candidate.

We wish to thank you for the opportunity to present our views on an issue of campaign finance reform. It is encouraging to see that the committee has wasted no time this year in trying to tackle this complex subject. I would be pleased to answer any questions that the Committee may have.

The CHAIRMAN. Thank you very much, Ms. Miller. In reading your testimony and then listening to you here today, it seems to me that disclosure is the first step in regard to the entire question of "soft money." I think until we can see clearly just what is out there—you've had a hard time finding out, and you've spent lots of time looking at who's spending it and in what amounts and for what activities—I don't think we are ready to impose, or can impose, effective and meaningful regulations, or even to determine if regulations are really necessary, because we don't have a good handle on it.

Would you comment on a requirement that all money used or spent in connection with Federal elections be disclosed and reported.

Ms. MILLER. The Center supports disclosure, of course, and we believe that that is a bottom line in terms of "soft money." The problem is, now that the FEC has not acted to require that "soft money" expenditures be reported to the FEC itself, and therefore while we agree with you a hundred percent that we need to know what's out there before we can know how much further we need to go, until we have some action requiring the FEC to act in this regard to get "soft money" expenditures reported, we don't know what's out there.

The CHAIRMAN. What kind of requirement would you and your colleagues recommend be included in S. 2?

Ms. MILLER. I think the cornerstone of our recommendations is that the national party committees and their national affiliates report separately all contributions, all contributors, and all expenditures to their non-Federal "soft money" account. That is the first recommendation that we would make.

And, secondly, that the FEC be required to issue new allocation rules and require that the allocations made by the state party committees also be reported to the FEC.

Those two recommendations would give the public and the FEC, who is supposed to monitor campaign spending, a baseline of information to judge actually what is going on in a "soft money" world.

The CHAIRMAN. Would a provision that all money crossing state lines for use in Federal elections be disclosed and reported help the situation?

Ms. MILLER. It goes part way; it's not quite as complete as what we have in mind.

The CHAIRMAN. Senator Stevens, do you have questions?

Senator STEVENS. You've done a very thorough job, and I congratulate you. I think my concept of "soft money" is a lot broader than yours, though. You did use the word "umbrella" as far as a definition. Isn't there a lot more money out there that's really influencing elections other than what you have described as "soft money" this morning?

Ms. MILLER. Well, there are many types of "soft money," the Senator is correct. What we have focused on in terms of our campaign finance research has been money which is raised by national party committees, which is then used by the state party committees.

Many people have taken the term "soft money" and applied it to other perhaps behind-the-scenes kind of campaign finance operations.

Senator STEVENS. Let's just assume that I take a position that a national organization doesn't like—it's a non-profit organization, and it goes to Alaska and hires a bright young lawyer and tells that young lawyer, "We want you to nitpick Senator Stevens—write letters to the editor, go raise questions wherever he is publicly—just harass him." Isn't that "soft money," too?

Ms. MILLER. It depends on how the organization is constituted.

Senator STEVENS. It's constituted as a national non-profit organization. They raise tax-deductible contributions, and they've hired a young lawyer just to harass me. Now, this is hypothetical, by the way—they may be there, but I don't know whether they are there or not.

The CHAIRMAN. They wouldn't dare.

Senator STEVENS. Let's just assume that they do it. I think they do do that to people in campaigns. If someone is paid by an entity, whether private business, union, non-profit, to be involved in the political process, isn't that "soft money"?

Ms. MILLER. It's a hypothetical. The answer to that would be, yes, it would be "soft money," it would be a campaign finance operation, a backdoor operation. But the IRS establishes quite strict rules and a multitude of interpretations which say exactly what a 501(c)(3) or (c)(4) organization can and cannot do.

So if an organization is acting in a manner which would be considered "electioneering," which is what you seem to be describing, at least hypothetically, then they would be subject to IRS scrutiny. It would not come under FEC.

Senator STEVENS. Let me tell you, the IRS wouldn't scrutinize that kind of expenditure; they'd just see a report of legal expenses in Alaska. Can we really ever expect to control "soft money"?

Ms. MILLER. Well, there are certain pieces of it that we can expect to control, and the piece that we have talked about today, in terms of the national party committees and their relationship with their state parties—that is a piece that is at least controllable; at least we can know what is going on if we move in the direction of more disclosure.

In terms of the other ways that "soft money" can or cannot be funneled around the country through 501(c)(3) organizations, or (c)(4)'s, or—

Senator STEVENS. Business corporations can do the same thing. I remember seeing in one state a group of people standing on the corners on a superhighway. On one corner was a group with one set of placards, on the other corner was another set of placards—and I was told that one group had been hired by the unions and the other group had been hired by the Chamber of Commerce. They were all holding different candidates' placards and slogans. They were involved in the political process. That's "soft money" to me. Can we ever get to that?

Ms. MILLER. Because 501(c)(3)'s do not operate under FEC jurisdiction, they certainly have to be taken up separately and looked at separately, because those are under IRS laws. And if they are in

violation of those laws, then perhaps the question needs to be addressed in that direction.

Senator STEVENS. I don't have any objection to any of your suggestions, except that I don't think they go far enough yet. In my judgment, we have to find some way to get to the point where we have a boundary line between volunteerism and people who are hired to participate in the political process. Now, I don't know how to do that, but if you have any suggestions, we would be glad to have them.

I think your suggestions about reporting are absolutely minimally required to deal with what we see developing in the "soft money" area.

Thank you very much.

The CHAIRMAN. Thank you, Ms. Miller. Let me announce that the hearing record will stay open for a week. If anybody has comments they would like to insert in the record, we will be glad to receive them. And I'm also incorporating in the hearing—but not to be printed—the hearings we held in the 99th Congress, so that they will be part of the deliberation and the mark-up of S. 2.

Our next witness is Mr. S.M. Henry Brown, Jr., chairman, Public Affairs Steering Committee of the National Association of Manufacturers. Mr. Brown, we are delighted to have you and look forward to your testimony.

TESTIMONY OF S.M. HENRY BROWN, JR., CHAIRMAN, PUBLIC AFFAIRS STEERING COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. BROWN. Thank you very much, Mr. Chairman. I would request, before I begin my remarks, that our full testimony be entered into the record.

The CHAIRMAN. Your full testimony will be included in the record, as if given. If you want to highlight it, we'd be grateful. Thank you, sir.

Mr. BROWN. Mr. Chairman, I'm Henry Brown, manager of public affairs for Carolina Power & Light Company in Raleigh, North Carolina. I appear before you today in my capacity as chairman of the National Public Affairs Steering Committee of the National Association of Manufacturers, the NAM.

The NAM is a voluntary business association of over 13,500 companies of every size and industrial classification, located in every state. Our members employ 85 percent of all workers in manufacturing and produce over 80 percent of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through our Association's Council and the National Industrial Council.

The NAM thanks the Chairman for the opportunity to comment on proposed campaign finance reform legislation presently before this Committee. We begin with the premise that reform may be necessary and can be positive, but that reform must be carefully thought out and its impact fully known.

The NAM strongly favors the existing system of voluntary citizen campaign financing and is completely opposed to total or partial government funding of U.S. senatorial campaigns. The Associa-

tion believes our representative form of government functions best when candidates seek voluntary contributions from citizens or citizen groups.

You will note that what others call "public financing" we prefer to call "government financing," because it is taxpayer dollars allocated by the government to fund campaigns without regard to the taxpayers' interest or lack of same in a specific senatorial race.

We fear that candidates allowed to use government funds for their campaign expenditures are likely to be less responsive to the needs of the citizens whom they represent. Content to draw upon tax dollars, they will be less likely to draw upon the public's hearts and minds. It has been proven repeatedly that a personal campaign contribution means personal interest and a likely voter. I'd like to repeat that statement. It has been proven repeatedly that a personal campaign contribution means personal interest and a likely voter. This is the heart of our objection to public financing. The more impersonal the process is, the less interest an individual has in the process, the candidates, and the election outcome.

Our ultimate goal should be to encourage that likely voter. Political parties and candidates aside, our country needs an informed and involved electorate. The National Association of Manufacturers continues to be concerned about how few American voters participate in the process and cast ballots on any given election day. Senate bill 2, for example, may very well exacerbate this problem.

Mr. Chairman, the current system works. Money is not buying elections. Recent senatorial elections demonstrate that the candidate who spends the most money does not necessarily win. In fact, the current system of campaign financing is a salutary money management course for candidates, teaching them the lesson of the value of a dollar, a lesson in prudent use of financial resources that Federal financing would nullify.

In keeping with our representative form of government, public policy efforts and the energies of this Committee should be directed toward encouraging greater citizen understanding of, and participation in, the political process.

Speaking now on the subject of political action committees, the National Association of Manufacturers strongly supports the concept and role of political action committees. The Association recognizes their contribution to an open campaign system, to the promotion of greater citizen involvement in politics, and to the development of public policy. PAC's are only one part of a broad set of citizen activities that encourage understanding and participation in the political process. Again let me reemphasize here, the important need for understanding and participating in the political process by citizens should not be lost in the zeal to reform the campaign process. Let's work to create a spirit of enthusiasm and a thirst for involvement. That cannot be accomplished by depersonalizing the role of the citizen.

PAC's provide a vehicle for citizens who share common views to join together voluntarily in support of candidates for public office. Some would suggest that there is something devious about employees of a company joining together to participate in the political process through a PAC. The term "special interest" has come to be used in a negative context. We would submit to you that joining

together to achieve a common goal, whether it's employees participating in a PAC to elect representatives who share their ideals, whether it's citizens coming together to seek laws and regulations to protect the environment, or whether it's Members of Congress joining together to cosponsor legislation to reach a legislative objective, that this joining together in numbers is reasonable, moral, effective, and as American as apple pie. Did the designers of the Declaration of Independence have a special interest? You bet they did.

Citizen involvement in the political arena is essential to make our system function properly. Through PAC's and other participatory actions, corporations are enhancing and encouraging the democratic process. Through PAC's thousands of individual citizens have been newly brought into the political process.

Today's PAC's, with full disclosure of receipts, recipients and expenditures, are the result of far-reaching reforms in the campaign financing system, and, I might add, one heck of an improvement over the old way.

Adequate campaign financing is essential to an informed voter electorate. PAC's help finance the campaign funds to increase the exposure of candidates to public scrutiny.

The proposed legislation, through its PAC limitation provisions, would create a mad scramble among PAC's to get into a campaign before the candidate's PAC limit is reached. PAC's would have to commit funds earlier than ever before, a difficult task for the many that offer payroll deductions for contributions. The result would be discrimination against some of the smaller PAC's that don't have the financial or staff resources to mobilize quickly. If these smaller PAC's can't contribute early, their voice may very well be completely silenced.

We would also like to voice our concern about Senate bill 2's treatment of PAC's affiliated with foreign-owned companies. In the bill, American citizens are denied certain of their rights of political expression through PAC participation merely because their corporate employer is foreign-owned, defined as 50 percent or more. We recognize that under present law foreign nationals are prohibited from contributing in U.S. congressional elections. And we support that prohibition. However, denying American corporate employees the full rights enjoyed by all U.S. citizens can never be tolerated under the Constitution.

Our remaining reservation deals with the measure's impractical accounting system. The FEC would face the impossible task of regulating candidates' expenditures on almost an hour-to-hour basis. How can political action committees be informed of a candidate's contribution status quickly enough to stop contributions that push the candidate over the legal PAC limit? Would candidates return checks quickly? If candidates did not immediately return unaccepted checks, how would a PAC know if it still had funds to give to other committee-supported campaigns?

Mr. Chairman, NAM advocates certain campaign finance law changes aimed at maximizing participation in our political process.

Number one, we would recommend a broadening of the disclosure requirements. We continue to fully and completely support disclosure by both contributors and recipients. This knowledge, shared by the FEC and researched by the press, creates an open

climate for voter awareness. Other contributions and spending for items such as party construction funds and get-out-the-vote efforts, which are not now disclosed, should also be subject to reporting requirements.

Number two, we feel that contributions should be limited to the current two-year cycle. Under the present system it is not uncommon for Senate candidates to start raising re-election funds up to six years before their next election. Many House incumbents focus on races beyond the current two-year term. Requiring that contributions to candidates be restricted to the current election cycle would focus constituent attention and voluntary contributions during a reasonable time frame.

Number three, we feel that candidates should be limited to a single committee. Contributors, as individuals or groups, are often asked to contribute to so-called leadership PAC's. These PAC's have been established by several Congressmen as a way to collect and redistribute funds to other candidates whom they choose. The original contributors may never know who in the end was the recipient of their contribution. To avoid unintended contributions, each House and Senate Member should be limited to a single authorized political committee that can make expenditures only for the office for which the candidate has declared.

Number four, we believe—and I offer this with some reservation, knowing that one thing we don't need in this town is another bipartisan commission—but you might consider creating an independent bipartisan commission. There are many questions raised in this campaign finance discussion that are not answered in the proposed legislation. Focusing on regulation of funding sources does not get to the problem of the high cost of conducting campaigns today. We propose the creation of an independent nonpartisan commission to look further into ideas such as shortening the election season, lengthening House terms, or limiting Senate terms, attracting qualified candidates, and increasing public interest in primary and general elections.

And, finally, we would like to discuss the campaign contribution limits. Congress should re-examine the contribution limits that have stood in place since passage of the Federal Election Campaign Act of 1974. Reductions in allowable contributions from PAC's, which average only about 30 percent of a congressional campaign budget, are unnecessary. Instead, Congress should consider increasing the contribution limits for individuals and political parties.

Mr. Chairman, NAM is pleased to have the opportunity to play a role in the Committee's discussions centered on campaign finance law and practice. Although there will never be total agreement on each proposal, business-employee political action committees' concerns deserve to be included in the debate.

And we appreciate this opportunity.

[The prepared statement of Mr. Brown follows:]

STATEMENT OF S.M. HENRY BROWN, JR., NATIONAL ASSOCIATION OF MANUFACTURERS

Chairman Ford and members of the Senate Rules Committee, I am Henry Brown, Manager of Public Affairs for Carolina Power & Light Company, Raleigh, North Carolina. I appear today in my capacity as chairman of the National Association of Manufacturers' National Public Affairs Steering Committee.

The National Association of Manufacturers is a voluntary business association of over 13,500 companies of every size and industrial classification, located in every state. Our members employ 85% of all workers in manufacturing and produce over 80% of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its Associations Council and National Industrial Council.

The NAM thanks the chairman for the opportunity to comment on the

proposed campaign finance reform legislation presently before this committee. We begin with the premise that reform may be necessary and can be positive, but that reform must be carefully thought out and its impact fully known.

Summary of Position

While we recognize and appreciate the sincere efforts of Senator Boren and others in addressing areas of concern relating to financing campaigns, we have serious reservations over the restrictions of individual rights contained specifically in S. 2. We hope today through this testimony to suggest certain legislative alternatives for consideration by the committee which we believe will address the concerns of Senator Boren while protecting the interests of individuals who choose voluntarily to participate in the political process.

Government Financing of Senatorial Campaigns

The NAM strongly favors the existing system of voluntary citizen campaign financing and is completely opposed to total or partial government funding of U.S. senatorial campaigns. The association believes our representative form of government functions best when candidates seek voluntary contributions from citizens or citizen groups.

You will note that what others call "public financing," we prefer to call "government financing" - taxpayer dollars allocated by the government to fund campaigns without regard for the taxpayer's interest or lack of same in a specific senatorial race.

S. 2, which addresses only the 30-plus Senate races up each two years, with no reference to the House races, carries a price tag of at least \$92.5 million, according to estimates by the Federal Election Commission. This figure does not apparently include extra payments to candidates whose opponents are beneficiaries of independent expenditures. The suggested funding mechanism of doubling the amount earmarked by the presidential check-off box on tax returns and using the additional money for Senate races would not begin to meet the \$92.5 million (or the \$150 million total of other versions) S. 2 would demand. We have spoken to several knowledgeable people who have called the tax return check-off "cosmetic," knowing that even if tripled or quadrupled this check-off expansion will never remain small enough to be painless and popular, nor large enough to finance all the candidates. Again, let there be no confusion about the real source of the millions that would be necessary to pay for this proposal: U.S. Senate campaigns would be paid for by general Treasury funds, placing a burden on all taxpayers and diverting federal revenues from other vital, competing uses.

Government funding of Senate candidates through tax dollars would constitute a costly and drastic change in our election process, calling for a super agency growing from the present Federal Election Commission. The FEC, a respected agency that for years has had to contend with continuing budget resolutions just to keep its doors open, would require extensive police powers, more staff, flawless judgment and more appropriations.

There is no question but that government funding would isolate the voter from his or her elected representatives. This expensive and controversial experiment in electoral management drifts far from what we believe are the intentions of S. 2's authors, who seek to free candidates from fund raising chores so they can more effectively legislate and/or campaign for office. Understandably, some weary candidates would prefer being handed a government-subsidized check instead of working for contributions, but candidates who can sell their ideas and visions to the public carry the true mandate of the people.

Instead, we fear that candidates allowed to use government funds for their campaign expenditures are likely to be less responsive to the needs of the citizens whom they represent. Content to draw upon tax dollars, they will be less likely to draw upon the public's hearts and minds. It has been proven repeatedly that a

personal campaign contribution means personal interest and a likely voter. Let me repeat that statement. It has been proven repeatedly that a personal campaign contribution means personal interest and a likely voter. This is the heart of our objection to public financing. The more impersonal the process is, the less interest an individual has in the process, the candidates, and the outcome.

Our ultimate goal should be to encourage that likely voter. Political parties and candidates aside, our country needs an informed and involved electorate. The NAM continues to be concerned about how few eligible American voters participate in the process and cast ballots on any given election day. S. 2 may well exacerbate this problem.

Government funding through the public's tax dollars would destroy the ability of individuals to make campaign contributions on an ideological and philosophical basis. They, as potential voters, would be deprived of the one major avenue they now have for directing the allocation of campaign funds and for actively supporting their favored candidates: their personal contribution. Citizens should not be required to fund campaigns of candidates they oppose or would not voluntarily support. The historic cry of "No More Taxation without Representation" could by 1988 become "No More Representation by Taxation."

What if this experiment proves to be wrong? We might find the public out of the game and watching from the sidelines, candidates passing up competitive House races to gamble with government funds for Senate seats, potential voters as no-shows and a cumbersome plan (that even some supporters are privately calling an "entitlement program" or "campaign grant") stretching federal finances and enforcement to the breaking point or into the courts.

Mr. Chairman, the present system works! Money is not buying elections. Recent senatorial elections demonstrate that the candidate who spends the most money does not necessarily win. In fact, the current system of campaign financing is a salutary "money management course" for candidates, teaching them the lesson of the value of a dollar--a lesson in prudent use of financial resources that federal financing would nullify. Use of government funds obviously minimizes this feature of the current system, and in itself, ironically, could very well lead to excessive spending in senatorial campaigns.

In keeping with our representative form of government, public policy efforts and the energies of this committee should be directed toward encouraging greater citizen understanding of, and participation in, the political process.

Political Action Committees

Speaking now on the subject of political action committees, we are concerned about proposals to limit PAC contributions. S. 2 would reduce both the amount of contributions from a single political action committee and the total support a candidate could accept from all PACs. Other proposals would restrict PAC contributions to narrow time frames in the election cycle.

The National Association of Manufacturers strongly supports the concept and role of political action committees. The association recognizes their contribution to an open campaign system, to the promotion of greater citizen involvement in politics and to the development of public policy. PACs are only one part of a broad set of citizen activities that encourage understanding and participation in the political process. Again, let me reemphasize here, the important need for understanding and participation in the political process by citizens should not be lost in the zeal to reform the campaign process. Let's work to create a spirit of enthusiasm and a thirst for involvement. That cannot be accomplished by depersonalizing the role of the citizen.

While the NAM does not have its own political action committee, many of our member companies do have voluntary employee

committees. We specifically believe that --

- People have a basic constitutional right to band together, and organizations have been held by the courts to enjoy first amendment rights in the manner accorded to individuals. PACs provide a vehicle for citizens who share common views to join together voluntarily in support of candidates for public office. Some would suggest that there is something devious about employees of a company joining together to participate in the political process through a PAC. The term "special interest" has come to be used in a negative context. We would submit to you that joining together to achieve a common goal - whether it's employees participating in a PAC to elect representatives who share their ideas, whether it's citizens coming together to seek laws and regulations to protect the environment, or whether it's members of Congress joining together to co-sponsor legislation to reach a legislative objective--that this joining together in numbers is reasonable, moral, effective--and as American as apple pie. Did the signers of our Declaration of Independence have a special interest? You bet they did!

- Citizen involvement in the political arena is essential to make our system function properly. Through PACs, and other participatory actions, corporations are enhancing and encouraging the democratic process. Through PACs, thousands of individual

citizens have been newly brought into the political process.

- Today's PACs--with full disclosure of receipts, recipients and expenditures--are the result of far-reaching reforms in the campaign financing system, and I might add, one heck of an improvement over the "old way."

- Adequate campaign financing is essential to an informed voter electorate. PACs help provide the campaign funds to increase the exposure of candidates to public scrutiny.

The NAM opposes legislative efforts that unduly or unfairly infringe on the individual's right to freely associate within the political process. We oppose any efforts that discourage people from contributing to a PAC or that discourage candidates from accepting PAC donations to their campaigns.

The proposed legislation through its PAC limitation provisions would create a mad scramble among PACs to get into a campaign before the candidate's PAC limit is reached. PACs would have to commit funds earlier than ever before, a difficult task for the many that offer payroll deductions for contributions. The result would be discrimination against some of the smaller PACs that don't have the financial or staff resources to mobilize quickly. If these smaller PACs can't contribute early, their voice may be

completely silenced.

Under S. 2 and similar measures, PACs would have little room for participation in general elections. A likely effect would be increased PAC participation in primaries. PACs have historically been reluctant to become involved in primaries for a number of reasons. Chief among those reasons is insufficient knowledge and resources to evaluate the contenders at this early stage.

Political action committees will not, and should not, go away. Restrictions on PACs will call for different applications of their financial support in the future. The independent expenditure process, for instance, seldom used by corporate employee committees, could become a more popular way of encouraging the election of chosen candidates.

More Questions

NAM has serious concern about S. 2's treatment of PACs affiliated with foreign-owned companies. In the bill, American citizens are denied certain of their rights of political expression through PAC participation merely because their corporate employer is foreign-owned (defined as 50% or more). We recognize that under present law, foreign nationals are prohibited from contributing in U.S. congressional elections. We support this prohibition.

However, denying American corporate employees the full rights enjoyed by all U.S. citizens can never be tolerated under the Constitution.

Our remaining reservation deals with the measure's impractical accounting system. The FEC would face the impossible task of regulating candidates' expenditures on almost an hour-to-hour basis. How can political action committees be informed of a candidate's contribution status quickly enough to stop contributions that push the candidate over the legal PAC threshold? Would candidates return checks quickly? If candidates did not immediately return unaccepted checks, how would a PAC know if it still had funds to give to other committee-supported campaigns?

Proposals to Improve Campaign Finance Laws

It is always easier to tear down a structure than to construct one. Luckily, the structure of campaign finance laws is not in serious jeopardy. We could adjust the current system rather than reconstruct an inequitable system.

NAM advocates certain campaign finance law changes aimed at maximizing participation in our political system:

1. Broaden Disclosure Requirements. We continue to fully and completely support disclosure by both contributors and recipients. This knowledge, shared by the FEC and researched by the press, creates an open climate for voter awareness.

Any other contributions and spending for items such as party construction funds and get-out-the-vote efforts -- which are not now disclosed -- should also be subject to reporting requirements.

2. Limit Contributions to Current Two-Year Cycle. Under the present system, it is not uncommon for Senate candidates to start raising reelection funds up to six years before their next election. Many House incumbents focus on races beyond the current two-year term. Requiring that contributions to candidates be restricted to the current election cycle would focus constituent attention and voluntary contributions during a reasonable time frame.

3. Limit Candidates to a Single Committee. Contributors, as individuals or groups, are often asked to contribute to so-called "leadership" PACs. These PACs have been established by several congressmen as a way to collect and redistribute funds to other candidates whom they choose. The original contributors may never know who, in the end, was the recipient of their contribution. To avoid unintended contributions, each House and Senate member

should be limited to a single authorized political committee that can make expenditures only for the office for which the candidate has declared.

4. Create an Independent Non-Partisan Commission. There are many questions raised in this campaign finance discussion that are not answered by the proposed legislation. Focusing on regulation of funding sources does not get to the problems of the high cost of conducting campaigns today. We propose the creation of an independent non-partisan commission to look further into ideas such as shortening the election season, lengthening House terms or limiting Senate terms, raising congressional pay, attracting qualified candidates and increasing public interest in primary and general elections.

5. Alter Campaign Contribution Limits. Congress should reexamine the contribution limits that have stood in place since passage of the Federal Election Campaign Act of 1974. Reductions in allowable contributions from PACs, which average only about 30% of a congressional campaign budget, are unnecessary. Instead, Congress should consider increasing the contribution limits for individuals and political parties.

Conclusion

NAM is pleased to play a role in the committee's discussions centering on campaign finance law and practices. Although there will never be total agreement on each proposal, business-employee political action committees' concerns deserve to be included in the debate.

NAM believes that Congress should not undertake any election reforms that erode the voluntary aspects of campaign financing and replace them with government funds siphoned from taxpayers. All reforms should have the higher purpose of broadening citizen awareness of, and participation in, the political process.

Senator ADAMS [presiding]. Thank you very much, Mr. Brown. My first question is, would you support extending the disclosure which you testified about, the cost of sponsorship and administration of corporate PAC's?

Mr. BROWN. Mr. Chairman, that is a situation that has caused a lot of concern in the many corporations in that how is it done on an equitable basis? How do you realistically—and we've gone through this with North Carolina state law, I might say, that up until recently disallowed any type of administrative cost to be borne by the corporation—it all had to be paid by PAC. We found it extremely difficult and really a reporting morass to have employees document telephone calls, their time, allocate their office space. I think there is some validity in what you suggest, but from a practical standpoint of itemizing it and logging it in a daily record, it presents some rather unbelievable problems.

Senator ADAMS. It has to be done by others, though, doesn't it, if they have no corporate sponsor?

Mr. BROWN. Sir?

Senator ADAMS. It has to be done by other types of PAC's if they have no corporate sponsor—in other words, they have to keep track of their expenses so that they know that they are alive and well and that they can report to their members, do they not?

Mr. BROWN. Yes, sir. And here again I think that the suggestion is well-taken. Another thing that I might mention, too, is that we try to impress on our employees that every dollar they give to the PAC is going to go to the candidates, that it is not going to go for overhead, no percentage. So we feel that we establish some credibility with the employees that we ask to contribute to our political action committee by letting them know that one hundred percent of the money they contribute to the PAC is going to go to a campaign.

Senator ADAMS. Would you support extending disclosure to any money spent or used in connection with Federal election by any organization?

Mr. BROWN. I personally believe—I don't know if NAM has a policy in that respect—but from my own personal standpoint I think that money spent on campaigns to influence an election, or the outcome of an election, should be reportable, yes, sir.

Senator ADAMS. Completely so? I can state to you that in the last election I know of one group that had no apparent affiliation, but came in and spent an enormous amount of money—and you think that should be disclosed as having been spent in that election?

Mr. BROWN. If in fact it was, yes, sir.

Senator ADAMS. Well, they put ads on and they appeared on television, so somebody had to pay for them.

Mr. BROWN. I agree.

Senator ADAMS. So you think that should be disclosed?

Mr. BROWN. Yes, sir.

Senator ADAMS. I have one last question. In your statement you indicate that you feel that PAC's are not the problem, but in the last election, as you testified, PAC's amounted to about 31 percent of all the receipts of the candidates. And, according to some of the organizations reporting on it, of the 190-some-odd House candidates, they got at least half of their money from PAC's.

In your opinion, is there any point at which PAC receipts become excessive?

Mr. BROWN. Well, I believe that question was posed to another witness earlier, and I think that—

Senator ADAMS. It was.

Mr. BROWN. I think that the basic conclusion was that it's in the eye of the beholder. I think that the candidate himself or herself has to judge when the individual has accepted so much money of any type, whatever the interest is, whether it's labor-oriented money or corporation-oriented money, or whatever—and, believe me, as an electric utility, we wrestle with this problem all the time—but it's up to the candidate to decide, in my opinion, when the burden of accepting contributions of whatever extent begins to harm his campaign and he begins to be accused of being tied to a particular interest.

Senator ADAMS. So you favor no limit.

Mr. BROWN. No, sir.

Senator ADAMS. Senator Stevens?

Senator STEVENS. I only have one comment. I notice you are another one whose organization has suggested limiting the use of contributions to one election cycle. Let me tell you, in one election I thought I had a real tough opponent coming, and we raised funds and that opponent didn't materialize, and I had money left over. I carried it over to the next cycle. Now, what's wrong with that?

I don't understand this idea that somehow we have to give away the money we have received and go out and start all over raising money if we don't spend the money we've raised for one election.

Mr. BROWN. Well, I think in the case that you've described, it's probably an equitable use of the money. And I know that you did not necessarily raise that money in one election cycle thinking that you might use it again in the next election cycle. But I would suggest to you that there are people who do that.

Senator STEVENS. You are talking about the way in which House candidates raise money. I think, unfortunately, we are dealing with a bill that's primarily aimed at the Senate. But all the provisions that people have suggested are designed to try to cure the problems of the House side. I don't know of any problem over here; I don't know anybody who's out raising money to run in 1994 in this cycle right now.

I just think people ought to think about that. The money that's left over in the political process ought to stay dedicated to the political process, in my judgment.

Thank you, Mr. Chairman.

Senator ADAMS. Thank you very much, Mr. Brown. We appreciate your testimony.

The next witness is Dr. Amitai Etzioni, university professor, George Washington University. Doctor, it's a pleasure to welcome you to the Committee. We'd be pleased to receive your testimony, and your full statement will be placed in the record, if you wish it done.

TESTIMONY OF AMITAI ETZIONI, UNIVERSITY PROFESSOR, THE
GEORGE WASHINGTON UNIVERSITY, WASHINGTON, DC

Dr. ETZIONI. Thank you very much, Senator Adams, Senator Warner. I very much appreciate the opportunity to testify before you, and I strongly support these three bills, especially the stronger among them, though even that one wouldn't go nearly all the way I suggest is necessary. And in my testimony I will be drawing on a study I did on the subject which was published under the title of "Capital Corruption." Before I turn to my main presentation, I would like to make one comment on what I learned today. It made me wish that there would be another law which would make it a contempt of Congress to come before a congressional committee and knowingly and deliberately provide false information to the highest deliberative body in the nation, indeed in the world. I was very distressed to hear again here obvious misinformation. It's difficult to believe that people could be that ignorant, that they don't know that PAC's are not committees of citizens who got together freely and voluntarily to present their views to their legislators. There are few such PAC's. In the overwhelming majority of PAC's, the members whose money is used do not know which candidate the money goes to, and therefore there is no way, shape or form they could be considered having been consulted or having participated in the democratic process. The money is collected, as we heard a moment ago, by check-offs on payrolls and such, not just by business, but by labor unions and such, and then small groups, often in Washington, unbeknownst to the members, decide which candidates get the money. They not only do not consult the people who give the money as to whom the money should go; they neglect to inform them after the fact to whom the money went.

So any suggestion that PAC's are a contribution to democracy is false on the face of it.

Senator WARNER. Are you indicting all PAC's with that statement?

Dr. ETZIONI. No, I said, Senator—

Senator WARNER. You had better separate it out, because, if you read your testimony, everybody is a bad guy.

Dr. ETZIONI. No, nobody read my testimony, because I haven't provided it. But what I said a moment ago, sir, was that the overwhelming majority of PAC's—there are a few exceptions, and I will turn to them in a moment—roughly 87 percent of the PAC's do not consult the membership and do not inform the membership; few inform, very few consult.

There is a very simple cure to it. If anybody really wants to make the PAC's participatory, let those who make contributions designate to whom the money should go. If people really believe this is democratic, why not? Why not allow the person who gives the money to designate which candidate is going to get it? It's very, very simple. With a check, you attach a paper—"this is going to go to Senator Warner." And then you will know who got your money.

That is not what the law calls for. The law invites the procedure to be such that small oligarchies, small cabals, can determine who gets the money.

Now, the other point is that there is clearly an unevenness in the extreme between those—as Senator Adams implied a moment ago, if I understood him correctly—who are backed up with infrastructures provided by corporations and by unions, and those who do not have such an infrastructure. The infrastructure includes the cost of administering, communication, and organizing the PAC.

Now, this is a very, very major issue, because the PAC's do not have such an infrastructure provided readymade to them and often spend 80 percent or more of the money they raise just to stay in business. To give a simple example, let's assume we want to organize tomorrow a PAC of bicycle riders who are going to protect their rights against car owners. We are going to have two PAC's—one organized by car manufacturers and one by this new association of bicycle riders. And you see immediately the problem: in order to organize a PAC of bicycle riders—I assume there is no major corporation promoting that—you will have to spend millions just to get the mailing lists, to get local organizers, to cover the administrative costs. On the other hand, a corporate or labor PAC with its readymade mailing list, its payroll deductions, its own machinery set in place, \$100,000, is vastly, vastly advantaged and creates, far from a democratic process, a system heavily tilted towards organized special interests and very tilted against not only the poor, the vulnerable, and the weak, but those disorganized public at-large citizens of which we heard so much today.

Now, basically the way our system developed, to go for a moment into the background, was to move away from the notion that the richer you are, the more political clout you should have. We started in a system in which there was in effect a plutocracy; in effect, you could not run for office unless you owned land—and in some periods you couldn't vote unless you owned land. And we felt strongly and we consider it a major progress over the centuries that we moved away from the notion that you should not have the same part in the political process if you happen to be born to richer parents or cornered the market or in some other way built up your wealth. We decided that the opposition in society should not be opposition in the polity—that there should be one person, one vote.

And what the present system does, not just in PAC's, but through the total introduction of private money into the political process, is to clearly tilt the system towards those who have larger and deeper pockets. The PAC's are just obviously part of the picture. We had a campaign in Illinois in which a single individual spent more than a million dollars against another, contributed against a Senator, because obviously there are no limitations on how much you can spend against a candidate. The whole notion that there is a limit on spending is a piece of legalism whose main use is to mislead the public. It has been repeated today that there is this limit of \$5,000. We give weight to the question of whether that should be reduced to \$3,000. In effect, as anybody in the PAC business knows, there is no limit how much you can contribute to anybody you want to contribute to. All you have to do is go to the Xerox machine and create more PAC's. The dairy industry wanted to contribute \$210,000—I don't know why they stopped there, I guess that did its business—so they created twenty-one

PAC's. And I could cite examples all day—the oil industry has as many PAC's as they need.

So as to the suggestion that by just being registered with the Federal Election Commission, we have disclosure—they often use names that hide who the special interest is, and you have to have an investigative team for the citizen to find out who really is behind a Committee for the American Way or some other such high-sounding name before you find out it's a lobby for such and such.

So the present system is heavily tilting in favor of special interests who are particularly endowed, particularly affluent, particularly well-organized, and does not provide the citizen at large an equal footing.

Public financing will go a great way in that direction. The notion that that will come from the government is another one of those misstatements. Yes, indeed, the government would provide the rules of the game. I don't know anybody, including Adam Smith, who wants to do away with the rules of the game. And the notion that a free society means that there be no limits, that there be no rules, that everybody can catch or hit as they can, is incompatible with any notion of freedom, liberty, or democracy. Rules have to exist for any fair competition, if it's in a football field or an election.

Now, if people are willing to voluntarily check off a dollar or two to support campaign contributions, the question must be asked: Why wouldn't they be allowed to do that? Why is that less good than supporting any other kind of public activity, whether defense or welfare or any other activity? Indeed, by checking off, citizens are given an additional privilege here of deciding to use the funds not usually available. Usually you can vote up or down a presidential candidate or a Senator, but you cannot vote on the funding to go to a specific bill. That's left to Congress. In this particular case, citizens will be free to check off voluntary contributions, and therefore they are given extra control of the kind not available usually to government expenditures.

Senator WARNER. On that point, when they check that off, they haven't got the faintest idea who's going to receive the money.

Dr. ETZIONI. That's correct, Senator.

Senator WARNER. In your opening statement, which is an impressive one, you said people ought to contribute to the persons they want. So it seems to me there's a dichotomy between your two principles.

Dr. ETZIONI. Yes, I would agree that they would designate to which candidate it should go. It's still a voluntary system.

Senator ADAMS. Let me follow up on Senator Warner's question, which is that whether we are either going to use the present campaign system or we are going to use a system of public financing, utilizing the check-off, how do you determine whether such a system should be encouraged and moved ahead? Do you think it should be based on who arrives at the final election? And, if you don't do that, do you use the quality of the candidates, the competitiveness of the races, the way in which the Senate operates, or some other standard? In other words, what standard do you use to decide who gets the money?

Dr. ETZIONI. We are talking about obviously two radically different systems. The first system——

Senator ADAMS. There are two separate systems, one we are talking about doing some limitations or control or, as you put it, rules over the system that we have now, which I may happen to agree with you on; and we are talking about a potential of a public financing system, which Senator Warner just referred to, that you check off—and I think we'd probably have to raise the amount of check-off in order to cover this. If you do that, how do you determine which is the better system? Do you say quality of candidates—and that is really kind of getting to the final, I guess—or do you say how competitive the race is or as you have to be, which we have used in the past—you've got to get such and such a percentage to be a viable candidate. What would be your test? Just whatever you feel—I don't mean to put words in your mouth, I'm just trying to phrase the question as to what would be your way of doing this.

Dr. ETZIONI. Senator, fortunately, because I am so opposed to introducing private money into the system, I had an opportunity to deliberate on that matter before. And my suggestion is that in order to qualify, in the primaries, before you get to the general election, a candidate would have to have signatures on a petition from X number of citizens, depending on the size of the state, in different counties of the state. So if it's a small state, let's say 250 people from each county—and that would qualify him. Now, we could change the number of signatures a candidate needs according to state size.

But here is really the difference. There is a difference between going to members of the community and asking them to sign saying, "I favor this candidate being on the ballot," and asking them to give money. Because if you ask them for the signature, all have a signature to give; but if you are asking for money, some people have a much easier time giving a thousand dollars than somebody else.

So the present system forces them to go to people who have a thousand dollars to give.

My system would make them able to go to anybody who had a signature to give, and all have a signature to give.

Senator ADAMS. Well, now, it's been charged that public financing is nothing more than incumbent protection. Would you comment on that?

Dr. ETZIONI. Well, under the suggested proposal there would be no more advantage to incumbents getting signatures than to anybody else. I do not see the system protecting incumbents. In view of the fact that in the present system, which is not public-financed, more than 90 percent are returned to office, how could a public financing system make it more in favor of an incumbent than the current system? Where would you go from 92 percent? To 100 percent.

So if there is any system which supports incumbents, it is the current system.

Senator ADAMS. Well, the question—I'll rephrase it—is that if you take an incumbent with a certain amount of name familiarity, and, in the case of the Senate, six years to build up a public image

in the area, and you take a challenger and you give them the same amount of money, then the incumbent has in effect an overwhelming advantage. That is the accusation. I am not saying I agree with that—I may not agree with that. As I indicated earlier in the hearing, I feel that what you have to have is at least a minimal amount of money to get the ticket to get into the ball park to play the game.

But if you have limited the amount, the statement has been made by many, many people that the incumbent then has a greater advantage and no challenger, if limited to the same amount of money, which means they buy the same amount of spots, can overcome the built-in advantage.

Would you comment on that?

Dr. ETZIONI. Yes. I believe an incumbent has a record, and so if the record is good then indeed that will be to the advantage of the incumbent. But incumbents very often find that as they move in supporting this or that legislation, they aggravate part of the community. And so they open themselves up to challenges by people who appeal to that part of the community which is disaffected by the action of the incumbent. A new candidate often has much less of a record. Being an incumbent cuts both ways. And if the incumbent did properly represent his constituents, then I don't see why he should be unseated.

Secondly, when we have challenging candidates, if they are not maverick, they often are supported by a social movement, by women's groups, by an environmental group, by a business group, which bring out volunteers and in that way can participate.

Ultimately, if the problem continued, I can see going to a point where you would give an incumbent a slightly higher proportion of the funds.

But I would like to emphasize that whatever problem a public financing system could have, nobody should charge it with helping the incumbent, in a system which is privately financed and is so heavily tilted in favor of incumbents, because they can deliver the legislation. The reason incumbents are presently favored is because they are sitting on committees in which special interests get their way. And there is in some areas obviously, as often reported, a high correlation between campaign contributions and delivering the bacon. And that a challenger can obviously not do.

So if there is a system which is tilted in favor of incumbents, it is the present system, not the public financing system. It would reduce the obligation of candidates to special-interest groups and equalize the match, or at least reduce the advantage of incumbents.

Senator WARNER. Mr. Chairman, if I could follow on.

Senator ADAMS. Senator Warner.

Senator WARNER. The Chairman's question really cuts to the heart of this issue, and that is the advantage that the incumbents are having. I am looking at the proposal here. In my state, Virginia, which has roughly four and a half million citizens, the Senator would be allowed roughly \$1.7 million. And, coincidentally, that's exactly what my last campaign resulted in by way of expenditures.

I don't mean to be immodest, but I've been in office eight years, and there is certainly a body that agrees and disagrees with me. But they know who I am. The only way, in my judgment, anyone

could come in with that small amount of money and dislodge me would be a former governor who had just finished a statewide office, possibly a Congressman—it's a question that would be doubtful. But they would have to begin to build up what we call in politics "name ID." And it would take almost a million dollars to just get a new face before my state or other states so that then they could begin to deal with the issues and differentiate themselves from the incumbent.

So I want to see this system as fair as possible, and I personally happen to enjoy campaigning and like to have a good, strong opponent, as I did my first time.

But I think you are taking an unknown and shutting him out of the race here, and it's really gotten down to a very small group of persons who previously held statewide office, who can take on a Senator.

Dr. ETZIONI. Well, with all due respect, that is what the present system does. And it has yet to be proven that public financing couldn't do better. But if that would be the case, and if that is the concern—and I think it's very generous of the incumbents to worry about that—then all we would do is give \$2 or \$3 or \$4 to any challenger for every incumbent, and that would—

Senator WARNER. You just hit the pinball machine then.

Dr. ETZIONI. But I should point out, in my personal experience—the Senator who was previously here, who was at that time a challenger, I was in the meeting in which it was decided that if he could raise \$2 million, he could go and challenge, because nobody would dare run against him if he had such a chest. He raised a million dollars and ran without opposition in his party, and he was here this morning.

So it does happen that people who are not in office raise money and challenge.

All we are seeking is to open up the system, and it couldn't be much more closed than it currently is.

Senator ADAMS. Do you have any further questions?

Senator WARNER. No, and I thank the witness. We may not agree, but you've made a valuable contribution.

Dr. ETZIONI. Thank you.

Senator ADAMS. I want to thank you very much. I appreciated your direct comment in response to my questions, and I understand your favoring of public financing of campaigns and using, in effect, a petition system as a means of determining viability of candidates.

Dr. ETZIONI. Yes, sir.

Senator ADAMS. Thank you very much.

Dr. ETZIONI. Thank you.

[The prepared statement of Dr. Etzioni follows:]

STATEMENT OF AMITAI ETZIONI, THE GEORGE WASHINGTON UNIVERSITY

My name is Amitai Etzioni. I am University Professor at The George Washington University and author of Capital Corruption.

There are numerous strong reasons to favor S.50, S.2, and especially S.725. Indeed, one must hope similar bills will be introduced into the House.

First, and foremost, only a complete cut off of private financing of election campaigns will restore our political system to one person one vote, the basis of our democratic system. Historically we used to have a property-weighted poll system. Only owners of land were allowed to vote, and only men of means were allowed to run for office. American democracy advanced following a gradual removal of these plutocratic definitions of the right to vote and made our government into a truer representative of all people.

Now, we are retrogressing toward a plutocracy. The recent flood of private money into Congress provides a much greater voice for those who are well healed, enhances their ability to bring the vote out and to influence members of Congress once elected, than those less well endowed. As Senator Dole put it: the poor have no PACs. And, one may add, the PACs of other vulnerable groups have the most shallow pockets. Also, in numerous areas in which a narrow special interest is arranged against the public at large, it often can buy its way. Finally, conservatives of both parties draw more cash than liberals, and incumbents draw much more private money than challengers.

It makes no sense whatsoever to dam part of the private money floods and leave other gates open. All that does is to shift the flow. The channels must be shut simultaneously, as the present bill aims to do.

Opponents argue that public financing of congressional elections would protect incumbents, who would have less trouble qualifying than challengers; would be costly and unworkable; would put members of Congress in the position of writing rules that would affect their opponents' campaigns; and would undermine the political freedom of individuals and of PACs, which are depicted by opponents of public financing as part and parcel of American voluntarism and grassroots participation in politics.

At the same time it can be argued that, in fact, public financing would be a boon to challengers because it promises all who can mount serious campaigns that they will be provided with funds equivalent to those set aside for incumbents. The objection that Congress should not write the rules governing members' opponents' campaigns disregards the fact that Congress writes the rules anyhow; it prohibited corporate contributions, set the limits on individual contributions, and so on. And to the extent that campaign rules are deemed unfair or unconstitutional, they can be challenged in the courts.

Far from being excluded from participation, individuals not only could continue to express their political inclinations freely under a system of public financing, but would be better able to do so, on a more equal footing, to the extent that

private contributions are diminished. All that citizens would lose in the process is their ability to purchase a disproportionate influence, measured by the size of their pocketbooks rather than by political viewpoint and dedication.

As to the argument that paying for all congressional elections would be costly, Gregg Ward, himself a PAC-man representing the Sheet Metal and Air Conditioning Contractors' National Association, and not a fan of public financing, provided an answer that I find difficult to improve upon. The total amount spent on congressional campaigns in 1982 was \$344 million. Considering that in 1981 Americans spent \$820 million on lipstick and \$588 million on deodorant, such costs aren't excessive, says Ward. I agree; we certainly can afford to pay for cleaner politics. Moreover, the direct economic benefits to the public of cleaner politics, aside from the value of a more democratic government, are so immense that a more advantageous investment is difficult to imagine. There are numerous individual bills, from diluting the windfall-profits tax to jacking up the price of sugar and milk, that if defeated would return to the public many scores of dollars for each \$1.30 (give or take a quarter) that public financing costs per head. (This figure is based on the costs of the 1982 election divided by the number of Americans.)

There is a fine way to recover a good deal of the cost of public financing of congressional elections: remove the tax credit now granted for contributions to PACs! The tax credit cost the U.S. Treasury about \$117.6 million in fiscal year 1982.

(Actually, as Representatives Matthew F. McHugh and Barber B. Conable, Jr., have suggested, it should be repealed anyhow.)

I call for the public to provide full coverage of campaign costs, costs we shall shortly see might be much reduced. Others have called for partial coverage -- for instance, for public funds to "match" private donations and for both to be used in combination to cover campaign costs. This is less preferable: in effect, it keeps a role for income-weighted suffrage in the system, and it also complicates the system to a considerable extent.

Douglass Caddy includes in his book How They Rig Our Elections a list of reasons various people object to public financing (of any kind). I list his points and respond to them:

"1. So radical an idea [as public financing] should be subject to careful scrutiny before adoption." Although I do not see the idea as radical, I surely do not object to careful scrutiny, unless it is advocated to delay action.

"2. The belief that public financing will purify the electoral process in a way that no other reforms will is naive and untrue." A high-class red herring. I do not know anyone who claims the result will be purification, only that public financing will help substantially.

"3. Public financing is contrary to our tradition of private financing, a tradition which both weeds out inviable candidates and underpins the voluntaristic nature of our political system." First, public financing is now part of our

tradition. Second, a candidate unable to pour in money, or to raise it, is not necessarily otherwise incompetent or "inviolate." Last but not least, there are many other, less corrupting, ways to volunteer.

"4. Public financing will repose power over campaigns in the bureaucrats, not the people." Congress sets the rules and a bipartisan commission (FEC) and its tiny staff oversee their enforcement. The same procedure is used for setting and supervising the rules for private financing. Unless one favors a completely unregulated flow of private money into politics, this is not a point against public financing. To reiterate: one may be against big government and still, like Adam Smith, recognize the need for a government to ensure fair competition, competition by agreed-upon rules.

"5. Public financing is yet another example of the subsidy philosophy." So is paying legislators. Not all "subsidies" are bad.

"6. Public financing proposals prohibiting or unreasonably limiting private contributions may violate First Amendment guarantees of free speech." The Supreme Court has decided otherwise, ruling that the public financing of political campaigns does not abridge freedom of speech but, rather, furthers First Amendment values by using public funds "to facilitate and enlarge public discussion and participation."

"7. Whether or not Americans support public financing is

open to question." Fair enough, but wait until they learn more about PACs!

"8. Public financing will unfairly work to the advantage of incumbents." If this is found true, more funds should be given to challengers (for instance, to match franking privileges members of Congress have), or spending by incumbents should be further restricted, especially during election months.

Senator ADAMS. Ms. Judy Brazeal. Ms. Brazeal, welcome to the Committee, and will you introduce those who will appear with you, please.

TESTIMONY OF JUDY K. BRAZEAL, UNITED TRANSPORTATION UNION, AND TRANSPORTATION POLITICAL EDUCATION LEAGUE, ACCOMPANIED BY FRED A. HARDIN, PRESIDENT, UNITED TRANSPORTATION UNION

Ms. BRAZEAL. Thank you, Senator, and Members of the Committee, for allowing me to appear. My name is Judy Brazeal, I am administrative assistant to the president of the United Transportation Union and manager of the legislative department and director of our political action committee, the Transportation Political Education League. Appearing with me is our union president, Mr. Fred Hardin, who is also the national chairman of our political action committee, TPEL.

I've submitted my statement to you in the interest of your time, and won't read it in its entirety, but I would like to emphasize that our interest is—

Senator ADAMS. Ms. Brazeal, your statement, without objection, will appear in full in the record. You may summarize or proceed in any way you wish. And, Mr. Hardin, if you wish to comment during the course of it, please feel free to do so. Ms. Brazeal.

Ms. BRAZEAL. Our interest is to protect the thousands of individuals who contribute to our fund, to pool their small contributions through legal and sincere PAC funds. Contributions to our fund come from our own members and retirees only in small amounts. Our average monthly contribution from individuals is less than \$3 a month.

In my statement I have itemized the problem in reporting requirements, and would be happy to elaborate, should you feel the need. The enormous cost of campaigns is indeed staggering. However, as brought out by some of the witnesses, that has not been caused by political action committees. The United Transportation Union only has one PAC, and many business and corporate groups have apparently registered many times under different names, and make several contributions from different PAC's. These are all reported and are all legal.

As pointed out in my statement, we are not a single special-interest PAC. Our people are vitally interested in a wide variety of legislation, such as safety in the work place, funding for public transit and AMTRAK, tax reforms, taxation on their pensions, catastrophic health care, the Federal Railroad Administration-Federal Aviation Administration.

During the hearings this morning interesting questions have been raised as to changes in the election law in limiting fundraising to the election year only, and limiting fundraising events. Some of the ills of the existing system of running for office are not the fault of the candidates or of political action committees. Important to us, and hopefully to you, our PAC does not involve itself in any negative campaigning.

One of the Senate bills introduced—I believe S. 50—proposes to double the limit on independent expenditures while lowering the

limit for political action committees from 5,000 to 3,000. We would hate to see that happen.

I appreciate the opportunity to appear before you, and I will be happy to answer any questions you may have.

Senator ADAMS. I just have one question, and that is that you indicated a particular problem that you had in the technical reporting requirements. Would you state that? Would you describe what that problem was or is?

Ms. BRAZEAL. I'd be glad to. We are registered as a multi-candidate committee. We also file in several different states, because we do support state candidates in almost all the states. One state has very strict reporting requirements, and that is the state of Wisconsin, in that there is a set limit on all contributions received from political action committees. Any state candidate has a definite limit on him, not just from one PAC, but from all the PAC's put together, so that in an election cycle the candidates running for office in Wisconsin have no way of knowing when they have reached a limit on accepting PAC contributions. In the last election cycle I believe we contributed to some forty-eight candidates, and out of that almost thirty candidates had to return contributions because they had reached the limit. They did not realize that themselves until it was time for them to file their reports.

Almost the same language is contained in S. 2. That would be a problem for all political action committees, and indeed a problem for all candidates receiving money, particularly when you have different offices. The offices in your district, in your state, and also here in Washington may be accepting contributions, and there would not be any way of knowing when you have indeed reached a limit.

Senator ADAMS. Thank you, Ms. Brazeal. Mr. Hardin, do you have any comment to make?

Mr. HARDIN. Mr. Chairman, I appreciate very much being able to come in. I just have one comment to make. Of course the main thrust of this hearing is on possibly the public funding of senatorial elections, and we heartily endorse that. We think it's very, very important; we think the people of the United States would probably rather have the deduction go to senatorial races, to the people who really represent them, rather than a presidential race.

So we publicly endorse use of public tax rebates, or credits for that purpose. And we certainly would be opposed to any type of public funding by anybody merely getting up a petition, because all of our people would start getting out and getting petitions up so they could get some funding.

But this is a very important thing, and we are very interested in it. But our main thrust is to not take away the right of a few individuals, a few thousand individuals, to put small amounts in so they can have a voice in the election of their representatives.

Thank you.

Senator ADAMS. Thank you, Mr. Hardin. Thank you, Ms. Brazeal. I appreciate your testimony.

[The prepared statement of Ms. Brazeal follows:]

STATEMENT OF JUDY K. BRAZEAL, UNITED TRANSPORTATION UNION

My name is Judy K. Brazeal. I am Administrative Assistant to the President of the United Transportation Union and Manager of the Legislative Department and Director of our political action fund, the Transportation Political Education League. Our headquarters is in Cleveland, Ohio.

Our union represents rail, bus and transit employees throughout the United States and Canada and our members are vitally interested in legislation both on a state and national level. Almost 50% of our active members contribute voluntarily to our PAC on a monthly continuing basis. Our retirees are very interested in the views and philosophies of Congress and have supported our union and our Transportation Political Education League generously both in monetary contributions and in writing their elected representatives.

The by-laws of TPEL provide that one-half of the contribution of a member be available for contributions to candidates for state offices within his or her state. The remaining one-half is used for contributions to candidates on the National level. No salaries or administrative costs in maintaining the PAC is ever drawn from the PAC fund. Our receipts during 1985 & 1986 were in excess of 2 million and disbursements totaled \$1,940,000.00.

When the Federal Election Commission Act was enacted in 1971, the Transportation Political Education League was one of the first to register and request status as a multi-candidate committee. We file reports with the FEC on a monthly basis and copies of each monthly report is filed with the appropriate supervisory officer in every state.

The FEC is quite comprehensive in their reporting requirements and have conducted three spot audits on TPEL in past years. Recommendations were made

to us as to overseeing deposits in specified time periods and minor adjustments in reporting disbursements. Their recommendations were complied with and have added to the efficiency of our operation.

Due to the passage of statutes in some states (Massachusetts, Missouri, Michigan & Pennsylvania) requiring a PAC to maintain funds domiciled in that particular state, TPEL has opened accounts and maintains separate checkbooks to comply with those state laws.

Many states accept the Federal Election Commission report filed monthly in lieu of state reports since all disbursements to state or federal candidates are itemized regardless of amount.

However, some states do require that we file additional reports with their supervisory offices on their forms, complying with many different regulations and reporting periods. One of these states is Wisconsin. Their statutes require that separate filings must be made and additionally, similar language was enacted as that proposed in S. 2 limiting the amount a candidate can receive from all PACs during his or her campaign.

This has caused considerable confusion on the state level both for the candidates and for the political action committees. For example, most candidates have no way of knowing when they have reached their limit in accepting PAC contributions until their election report is due. During each election cycle, we are faced with checks coming back to us (either our original check to the candidate, a check from his election committee, or a portion of our original contribution) for deposit and appropriate reporting. In 1986, 20 contributions were returned by Wisconsin candidates out of 39 checks written. In 1984, 20 checks were returned out of 58 written. Again, this is a direct result of the state law on limits for all PAC's and the provision in the proposed amendment to the Federal Law would place an identical burden on the candidates and on all political action committees. This necessitated complicated corrections of previous filings on both the federal and state levels and made accurate bookkeeping a far more tedious task.

By considering this language in S. 2, one can readily see the problems on a national level in that candidates may have more than one office accepting contributions and indeed may not realize at any given time that a limit has been reached.

In conclusion, I would like to state that we in the United Transportation Union realize that in this media age, running for public office is a frustrating and very expensive undertaking. We are very proud that thousands and thousands of our railroad worker members are active in local and national politics and governmental affairs and take great pride in being able to write or tell their elected representatives that they supported his or her election.

The right of individuals to contribute small amounts through legal and cooperating PACs should be enlarged and not restricted. Our members and retirees are concerned and interested in many pieces of legislation not directly connected with railroads and railroad employment.

Thank you for your time and consideration in allowing me to appear before this Committee.

That concludes the witnesses for this morning. The Committee will stand in recess.

[The Committee recessed at 12:44 p.m. to reconvene the following morning at 9:30 a.m.]

SENATE CAMPAIGN FINANCE PROPOSALS OF 1987

THURSDAY, APRIL 23, 1987

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 9:41 a.m., in room SR-301, Russell Senate Office Building, Hon. Dennis DeConcini, presiding.

Present: Senator Stevens.

Staff present: James O. King, staff director; William McW. Cochran, senior adviser; Gerald W. Siegel, chief counsel; Gail S. Martin, chief clerk; Wayne A. Schley, minority staff director; William B. Canfield III, minority chief counsel; John K. Swearingen, director, technical services; Carole J. Blessington, assistant chief clerk; John L. Sousa, elections counsel; Connie Friedmen, staff assistant; Denise H. Froehlich, professional staff member; Byron F. Hoover, staff assistant; John R. Moremen, staff assistant.

Senator DECONCINI. The Rules Committee will come to order.

Today is the fourth and final day of hearings on campaign reform. It is my understanding that Chairman Ford plans to begin a markup of S. 2, the Boren-Byrd bill, some time next week. I look forward to that markup and to swift floor action.

As I have stated during earlier hearings, comprehensive campaign reform legislation is long overdue in this Senator's judgment. The voters in my state have seen the light on this issue. Last fall, the Arizona voters passed a referendum by 72 percent which places new, very tough campaign finance regulations on state candidates. I believe that the Arizona vote reflects a nationwide frustration with the way we elect our government officials, a frustration with too much money being spent, with too much time being spent raising that money, and complicated problems associated with the same.

I do not subscribe to any simplistic view of the campaign financing process. The fault does not lie only with PAC's or only with candidates or only with fundraisers or with parties, for that matter. I do not seek to eliminate PAC's. I do not seek to reduce the influence of the parties or the PAC's or any of the other onerous motives that have been attributed to the so-called reformers.

What I seek is a process which is going to be fair and that provides for a more level playing field for incumbents and challengers. I also seek a process that will reduce the outrageous growth in campaign spending we have witnessed over the last decade.

I reject the notion that the American people will not support partial public financing. I am convinced that, given a clear understanding of the options, the American people—much like the voters in my state of Arizona—will say yes, reform the system. The American people have welcomed public financing of presidential elections. Even President Ronald Reagan has received more than \$90 million in public financing in his three presidential campaigns, 1976, 1980 and 1984.

I look forward to the testimony this morning, and I hope, indeed, that it will be constructive as I am sure it will be by looking at the witness list that we have before us today.

I would ask the witnesses if, when they testify, they would summarize their testimony. Their full testimony will be in the record in full, and we would ask them to summarize because of the time schedule of the Senator from Alaska and myself and others who may come to be here today.

I yield to the Senator from Alaska.

Senator STEVENS. Mr. Chairman, I will only be here for the first part of this hearing because of a meeting with the Secretary of State on the arms control matter, but I will be back as soon as I can.

I would say that I welcome your statement. I do think there has been a public impression that this is a PAC-bashing session. I do not think that that is warranted under the facts as I understand them.

I believe that we should have some experiments at the state level on public financing of state campaigns to see how they really work before we try it on national campaigns.

I view the central issue of this bill to be the issue of public financing of campaigns and whether S. 2 will be a step towards public financing of the campaigns of all Federal elections. Such an eventuality would lead to a minimum taxpayer cost of between \$300-\$400 million an election cycle on a minimum. That, to me, is something that everyone has to understand. We would never, I believe, see public financing stop at the election of Senators. It would go to the House of Representatives, and in my judgment, that is a decision, if it is to be made, that ought to be made by the public themselves.

I would welcome and support a constitutional amendment, for instance, that would allow the Congress to set expenditure limits on campaigns for Federal office, including the Presidency, the Senators and members of the House. But to do it in this fashion, to creep towards public financing of the total election cycle for the Congress, I think is wrong without the approval of the public.

I hope that the people who address this question before us will try to articulate, if they believe it to be the case, how public financing for Senate races can be legitimately separated from public financing of members of the House of Representatives. To me, the issue is, as I said, public financing. We will not have real disagreements over the balance of this bill. The major issue is public financing, and I think the sooner we recognize that in this Committee and on the floor, the better off we will all be.

Senator DeConcini, I do welcome your comments about PACs. I think many people who have put a lot of time in on raising funds

for Federal campaigns and supported the PAC process have been feeling that they were the target of these hearings. I do not think that to be the case.

Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Senator Stevens. I want to reiterate that. I think there has been a misimpression that there is an effort here to blame, if you want to call it that, problems in the electoral process here on PAC's. That is not this Senator's view at all. PAC's have played a very important role. I have spoken to numerous groups encouraging them to form PAC's and to expand their membership because they play an important role in education as well as financing campaigns.

The cost, of course—indeed, I agree with the Senator from Alaska—is going to be the issue. It is important for me that we are not talking about appropriated funds here. We are not talking about adding to the deficit. We are talking about financing this with a check-off, and I think that is important under today's fiscal problems that this country has.

Senator STEVENS. Well, Mr. Chairman, that still comes out of the taxpayers' money, an addition to the taxpayer's contribution.

Senator DECONCINI. It is voluntary.

Senator STEVENS. Well, it is not voluntary. You just check-off part of the money you are paying to the Treasury.

Senator DECONCINI. That is right.

Senator STEVENS. It does have an impact on the deficit. It will take money directly from the Treasury.

Senator DECONCINI. But it does not have to be done. It is a judgment in this Senator's opinion, the judgment of the taxpayer as to the priority of where they want the money spent, it seems to me.

In any event, our first witness today is Dr. David Adamany, President of Wayne State University. Dr. Adamany, would you please come forward.

TESTIMONY OF DR. DAVID ADAMANY, PRESIDENT, WAYNE STATE UNIVERSITY, DETROIT, MI

Dr. ADAMANY. Mr. Chairman, my name is David Adamany. I am president and professor of law and political science at Wayne State University in Detroit. I am here today in my capacity as a citizen and a scholar. I might say to Senator Stevens that I served for some years as Chairman of the Wisconsin State Elections Board, where we have had public financing at the state level for about ten years. In the state where I now reside, we have had public financing of executive office campaigns for almost a decade.

I am not here to advance the position on this legislation of any political organization, and the views I express are entirely my own.

Mr. Chairman, I have extended testimony, and I will very briefly summarize it. The rest of it could go into the record. I do want to say that I am here to testify in favor of S. 2, and although I have some modifications to suggest, I do strongly endorse the main principles, especially public financing of campaigns and more stringent limits on political action committees.

The first major concern, I believe, of campaign finance reform should be to preserve the underlying premise that citizens in a

democratic political system ought to be able to participate in politics in a roughly equal way. Ours is a political system based on the equality of citizens, but we are an economic system based on the private ownership of property and, thus, very substantial inequalities of wealth.

If we are going to preserve those two systems, we need to assure that the inequalities of wealth do not swamp equality in the political process.

I wish to very mildly disagree with the view that the regulation of PAC's is not a serious and pressing concern at this time. The evidence seems quite clear that funding through political action committees associated with major economic institutions in our society—corporations, labor unions, trade associations—has accelerated at a rate much faster than individual giving; that in the aggregate, it has become a very important force in campaign financing, now reaching 23 percent of the total funding of campaigns in the United States Senate. With nearly half of the members of the House of Representatives receiving half or more of their campaign contributions from political action committees, I think it is impossible to avoid the conclusion that large economic institutions in our society who are not citizens for the purpose of franchise or voting have begun to develop major influence in our political process. That is at odds with the view that citizens have a right to participate equally. Citizens have a right to participate equally—not corporations or labor unions.

The figures are already before you in an excellent study by David Huckabee and by my friend, Joe Cantor, of the Congressional Research Service, and I will not repeat those statistics which were commissioned on behalf of this Committee.

Similarly, there is a Common Cause report that shows the extent of political action committee financing in the House of Representatives, and I will not repeat those numbers.

I want to say that I strongly endorse the view that the contributions of political action committees to campaigns should be reduced from \$5,000 to \$3,000, but most importantly, I want to endorse the proposal that would limit the aggregate PAC contributions in any campaign. That is not an untested or an untried idea. If I may refer you to the long-standing campaign finance legislation in Wisconsin which imposed aggregate limits on political action committee gifts beginning in about 1976, we do have some experience with how such a system might work. It is an idea that I think helps to limit the extent of political action committee participation.

Secondly, Mr. Chairman, I want to relate the concern that campaign finance reform is essential if we are going to avoid the possibility, and certainly the appearance, that campaign contributors are exercising undue influence in the conduct of government.

I think there is widespread public impression that campaign financing practices have produced a system of undue influence by contributors in the affairs of government. Whether that is, in fact, the case is less important than that it increasingly undermines the standing of Congress with the public.

I want to make a special comment about the relationship of Congress and the executive branch. We now have campaigns for the presidency almost completely funded by public financing and with

very little political action committee participation. Consequently, presidential campaigns are not freighted down with the appearance of widespread influence by major economic institutions. Congressional campaigns, by contrast, increasingly are perceived, I believe, to be heavily influenced by political action committee funds with the result that the Congress stands in a disadvantaged position in the public mind in dealing with the executive branch.

I think it is very important that the Congress be able to have a high level of credibility with the public in order to pursue the system of checks and balances.

I would like to focus, if I may, Mr. Chairman, for just a moment on the importance of using public financing to offset the loss of campaign contributions that will occur with any reduction in PAC or individual contributions. Public financing reduces the reliance of members of Congress on private funds, and the limits on total PAC contributions will diminish the role of PACs in financing campaigns. And one hopes that the balance there will permit members of Congress and candidates for Congress to wage vigorous campaigns using public funds, even as private sources of contributions are diminished.

I want to make the point, Mr. Chairman, that it is important for all of us that campaigns be generously funded. The system of checks and balances, as I try to teach students in my law school classes, is not just the checks and balances between the three branches of the government, but they are the checks and balances that emerge in a campaign system in which challengers have an opportunity to present their programs and to criticize the records of those who hold public office, since the ultimate electoral check is in voting and not in institutional relationships.

In a system where there is insufficient funding to wage campaigns, there can be no effective checks upon the government by voters.

I believe that one of the important aspects of public financing is that it puts into the hands of qualified challengers an opportunity to seriously participate in campaigns—an opportunity which is not invariably present under present circumstances. Plainly, this is an uncomfortable situation for incumbents, but one can note with very considerable pride in our system that 30 members of the Senate are cosponsors of a bill which would put into the hands of their opponents some form of public funding. That seems to me to be very encouraging for those of us who believe in the rectitude of this government.

Mr. Chairman, on the subject of public financing, it is inevitable that we should also discuss the question of expenditure limits. I believe the expenditure limits as drafted in S. 2 are too low. I have taken a very preliminary look at the expenditures in Senate campaigns in 1984. We don't yet have full data on 1986, but it is clear to me that in a great many campaigns, more than 25 cents per voting age person was spent, even by challengers; and that the 25 cent limit, even with the add-on of \$600,000, would substantially curtail the opportunity for expenditures in campaigns.

If one views expenditures not as an evil but as a form of public education, then limitations on expenditures should be approached with caution.

I would personally prefer that we have no expenditure limits and that we reduce the contribution limits to a point that prevents the amassing of campaign war chests. So if there were a limit on PACs and a reduced limit on individual contributions, plus public financing, you would not need expenditure limits. If, however, we must have expenditure limits because of public pressure or because of a sense of urgency about them in the Congress, I would recommend that those expenditure limits be considerably increased.

At the present time, my colleague, Gary Jacobson, who will be testifying later, has developed the leading scholarly studies that show that unless there is an opportunity to spend money, candidates—especially those with lower visibility—cannot develop a public presence sufficient to make an effective campaign.

As I looked at the numbers, it is apparent that more than half of the challengers in 1984 would have had their spending reduced by the limits proposed in this bill. That means that the least visible candidates would have been injured by the expenditure limits as presently written.

Mr. Chairman, I will not discuss the specific aspects of expenditure limits except to recommend that they be substantially increased in this bill if they must be retained at all.

I am concerned also, Mr. Chairman, about the limitation on citizen participation in politics that is incorporated in S. 2. I think it is very important for citizens to have an opportunity to participate in politics, and the provisions of S. 2 cut off the opportunity for people to participate in politics by making contributions. After \$250,000 is raised, there is not an opportunity under the public financing provisions, for an ordinary citizen to make a contribution. I think this is a mistake.

I think that what we have learned in presidential campaigns is that the general election funding of presidential campaigns has helped to spawn independent expenditure committees. Our experience in general election campaigns is that with no opportunity for individuals to contribute to the presidential candidate of their choice, independent expenditure committees have made appeals for funds based on the premise that the contributions that come to them can be used on behalf of presidential candidates. Those appeals have been successful.

I believe we would both diminish the appeal of independent expenditure committees, and we would permit citizens to more effectively participate in political affairs if we allowed small contributions to be made, even side by side with public financing. Otherwise, you have a situation where we substitute public financing for all citizen participation in political campaigns.

Fifth, Mr. Chairman, I want to comment on the role of political parties. I believe S. 2 is a desirable bill because it preserves the role of political parties by leaving two important provisions of the Federal Election Campaign Act untouched. First, it allows national and state political party committees to make expenditures on behalf of candidates. And, secondly, it preserves the opportunity for local party committees to make so-called grassroots expenditures.

I do, however, believe that the present Federal Election Campaign Act is flawed with respect to political party expenditures. There is a provision in the law that allows local party committees

to spend money for registration and get-out-to-vote campaigns, but that is limited to campaigns for President and Vice-President. I would very strongly recommend that this bill be amended to permit local party committees to also spend money for registration and get-out-to-vote drives in the case of Senate and House of Representatives campaigns.

I think it is a quirk in the bill that allows local party committees to expend money without limit for voter registration and voter mobilization in presidential campaigns but not in campaigns for the Senate and House. If we are going to have vigorous political parties and voter mobilization, we surely ought to change that provision of the law. Unfortunately, that is a revision which has escaped notice in the drafting of S. 2.

Finally, Mr. Chairman, I want to say a word about the problem of independent expenditures. This bill does an outstanding job of more closely defining what is genuinely an independent expenditure. It makes it clear that expenditures made after consultation with campaign consultants, campaign managers, or political parties or using their information are not independent expenditures within the law, and that very urgently needs to be done.

Secondly, the bill takes a step toward increasing the public accountability of independent expenditure committees by requiring them to fully identify themselves in the course of their advertising.

I believe the bill is still deficient in dealing with independent expenditures in two respects: First, I believe that one of the most serious problems of independent expenditures that we face is the accumulation of vast sums of money by independent expenditure committees nationwide, and then dumping those funds into a handful of campaigns. I believe that we could go a step farther in full disclosure in independent expenditures by requiring that, if an independent expenditure committee comes into a state and makes massive expenditures, and if its funds are principally derived from outside that state, that it be required to report that in its disclosures. That is, I think its television advertising and its mass mailings should say simply that more than 50 percent of the funds of this committee were raised outside of the state or the district in which the spending is occurring.

That would put citizens on notice that there is extensive dumping of financial money through independent expenditures beyond the control of the candidate into the district or the state.

The second provision which is very troubling is the provision to increase campaign subsidies in those cases where there are independent expenditures against a candidate in a state. I think that is an unmanageable provision. It will be impossible to make the substantive judgment of whether particular expenditures are for a candidate or against them, and clever ways will be found to thwart that provision.

I would suggest simply that any time there are independent expenditures beyond a certain amount, that the candidates be allowed to raise the expenditure limit equivalent to the independent expenditures being made, with private fundraising being used to offset those limits. That will avoid the substantive judgment by the Federal Election Commission as to whether advertising is for or against a particular candidate. And given the present judicial doc-

trines on freedom of speech, those FEC determinations would be subject to injunction in the Federal Courts on a preliminary basis. We would soon wind up with a series of judicial decisions during campaigns making judgments about the substantive content of political advertising. I think that is all pretty unacceptable.

I do want to point out to you that when this issue was faced a few years ago in my home state of Wisconsin, they did adopt a provision which suspends the expenditure limits in cases where there is extensive independent expenditure activity. That has worked well as a deterrent.

Well, Mr. Chairman, I have covered most of the points I want to make. I know that this bill will be seriously criticized on many grounds. One of the criticisms will be that it does not do anything about the financing of primary election campaigns. I want to say that it may ultimately be necessary, but that is a much more difficult problem than the funding of general election campaigns.

I think the Congress should get on with the adoption of provisions in general election campaigns, and I do want to point out that we have several states in the United States that have public funding of general election campaigns but no public funding of primaries, and that it has not yet been necessary for them to move to the second step. So there are examples for us to draw on to take a partial step at this time.

In summary, Mr. Chairman, I want to say I appreciate the opportunity to be here. I do believe S. 2 is the most encouraging legislation that we have seen since the mid-1970s in dealing with the problems of congressional campaign finance. It provides public financing to assure vigorous campaigns. It limits the influence of political action committees without preventing them from participating, and it addresses the serious problem of independent expenditures. And we have not seen any legislation in the decade that addresses those problems in this way.

[The prepared statement of Dr. Adamany follows:]

STATEMENT OF DAVID ADAMANY, WAYNE STATE UNIVERSITY

Mr. Chairman, my name is David Adamany. I am president and professor of law and political science at Wayne State University in Detroit, Michigan. I am here today, Mr. Chairman, in my capacity as a citizen and scholar. I am not here to advance the position on this legislation of any political organization; and the views I express are entirely my own.

It is a privilege to have the opportunity once again to appear before this committee on behalf of legislation to amend the Federal Election Campaign Act.

Mr. Chairman, I am here to testify in favor of S. 2; and although I will suggest several modifications in the proposed bill, I strongly endorse the main principles embodied in S. 2. Specifically, Mr. Chairman, I am here to testify on behalf of public financing of campaigns for the United States Senate and more restrictive limits on the campaign contributions of political action committees, both the amount of a PAC's gifts to specific candidates and the amount that any candidate can receive in the aggregate from PACs.

For more than a decade, since the Federal Election Campaign Act Amendments of 1974, there has been strong opposition to public financing of congressional elections and to further restrictions on organizational contributions to campaigns. During this period, political finance has become a growing problem in the United States and is now a serious concern to the public at large and to many members of Congress.

Our ability to formulate a suitable public policy about campaign financing in congressional elections has floundered because of widespread confusion about the character of the problem and the appropriate questions to ask. I would like, therefore, Mr. Chairman, to attempt to focus my testimony by identifying the central issues that face us. There are many other concerns as well, but I regard those as peripheral. As long as we are sidetracked by secondary issues, there can be no reform of campaign finance practices as they have developed in recent years.

The first major issue of campaign finance reform is to preserve the underlying premise that citizens in a democratic political system ought to be able to participate in politics in a roughly equal way. Ours is a political system based on the equality of citizens; but we are an economic system based on the private ownership of property and thus substantial inequalities of wealth.

The preservation of both our democratic political system and our private property system should be a starting point for political finance reform. In recent years, however, the inequalities of the economic system have begun to dominate the political process. In the Federal Election Campaign Act of 1971 and its amendments, we attempted to guarantee reasonable equality of citizens in the political process by limiting the amounts that individuals and organizations could contribute to politics. In the case of individual contributions, this has worked well. Although there continue to be some individuals who are very active in making campaign contributions or raising campaign funds, we no longer see the domination of American politics by individuals who donate huge sums. It is useful to remind ourselves that in 1972 just 124 contributors gave a total of \$16.8 million dollars to the reelection campaign of President Nixon. As a result of the individual contribution limits in the Federal Election Campaign Act, individual giving on that scale is gone from our politics.

We have not been nearly as successful, however, in diminishing the influence in politics of political organizations affiliated with major economic institutions. These contributions are more a threat to the underlying equalitarian premise of our political system than are large individual donors. We should remember that the large economic institutions in our society--corporations, labor unions, trade and professional associations--not only have wealth that dwarfs the financial holdings of individuals but also that they are artificial persons and are not citizens upon whom the franchise is conferred.

Operating through PACs, the great economic interests in our society have come to have a commanding role in campaign finance. We do not yet have final figures for political action committee activity in the 1986 election. But there is no doubt that the total receipts of PACs are swelling at an incredible rate. During the first 18 months of the election cycle in 1977-78, total PAC receipts were \$54 million. During the same period in 1985-86, PAC receipts reached \$254.3 million--a fivefold increase. Of the \$200 million increase in PAC receipts, \$133 million went to PACs that were clearly associated with major economic institutions--corporations, labor unions, trade and professional associations, cooperatives, and nonstock business entities.

We are fortunate to have a more current picture of the role that PACs play in making campaign contributions. An excellent study by David Huckabee and my friend Joseph Cantor of the Congressional Research Service shows that PAC contributions to major party candidates for the United States Senate have increased from \$15.7 million in 1980 to \$45 million in 1986. In 1986 these PAC contributions were 23 percent of the funds available to Senate candidates, an increase from 19 percent in 1980.

A separate study released by Common Cause on April 7 reports that total PAC contributions to general election candidates for the House of Representatives totalled \$22.9 million in 1978 and reached \$84.6 million in 1986. In 1986, PAC contributions were 37 percent of total receipts for general election candidates for the House of Representatives, an increase from 25 percent in 1978. Nearly half of the members of the House of Representatives--194 members--received more than 50 percent of their campaign funds from PACs in 1986.

These figures plainly demonstrate that the role of citizens is diminishing in political finance and the role of PACs is increasing, especially the role of PACs associated with major economic institutions.

S. 2 addresses this erosion of citizen influence in politics by reducing the contribution limit on PAC gifts to candidates from \$5,000 to \$3,000. More important, S. 2 imposes a limit on the total amount that all PACs could aggregately contribute to candidates. This limit would vary in the Senate according to the population of each state; the limit in the smallest state would be \$175,000 while the maximum amount that PACs could give to Senate candidates in the largest state would be \$750,000. While this is still a large sum, it is a favorable contrast to present practice. In 1984, 15 Senate candidates received more than \$750,000 from PACs and 50 (more than half of the general election candidates) received more than \$175,000 from PACs.

Most important, this new limit on aggregate PAC contributions to a candidate would be paired with public financing of general election campaigns that would bar any PAC gifts to candidates who accepted public funding. This combination of provisions would surely reduce the role of PACs in directly financing candidates for the United States Senate.

The proposed limit of \$100,000 of PAC contributions to candidates for the House of Representatives would have an even greater effect in limiting PAC influence in elections. The Common Cause study showed that in 1986 323 members of the House of Representatives received \$100,000 or more from PACs.

With respect to the provisions of S. 2 limiting the aggregate contributions of PACs to candidates, I would make the following suggestion for revision. At the present time the bill imposes this limit on PACs themselves. This seems to me unworkable. PACs will not know what the total of PAC contributions to a candidate is. Slight revisions in the language can make it possible to fix responsibility on candidates as well as PACs, since the only way to monitor aggregate PAC contributions is for each candidate to maintain an ongoing tally of PAC contributions received to date.

A second and closely related concern of campaign finance reform is the possibility and the appearance that campaign contributors are exercising undue influence in the conduct of government. There seems to be very little doubt that the massive amounts of money contributed by political action committees are creating an impression throughout the nation that the legislative process is being improperly

influenced. Public confidence in Congress is being undermined by the present pattern of campaign financing.

In addition, the ability of Congress to play its full role as a counterweight to the Executive Branch is weakened by the present system of campaign finance. Presidential election campaigns are now principally paid for by public funding. Because of restrictions on the size of matchable campaign contributions and the large share of campaigns that are publicly financed, PACs have played a very small role in presidential campaigns. We are therefore faced with a public impression that presidential campaigns are relatively free of special interest money while congressional campaigns are inundated with tainted funds. This weakens the system of checks and balances by burdening Congress with the baggage of improper campaign financing practices while leaving the Executive Branch free of this stigma.

The reality of campaign money in the governmental process is more complicated than the impression that is being created. A few scholarly studies do show a very high correlation between campaign contributions and roll call votes on legislation. Most studies reach a much more muted conclusion, however. Party affiliation, political philosophy, and constituency characteristics emerge as major determinants of congressional voting. But campaign contributions do have some association with legislative roll calls, and this association is most likely to be high on complex, low visibility legislation. Yet much regulatory and tax legislation is of this character, and it should be beyond the influence of campaign contributors.

There are also numerous statements from members of Congress about the influence of campaign finance contributions on the legislative process. This direct testimony from our elected officials has an impact on the press and public, and it surely is a warning sign that campaign finance may be undermining the integrity of Congress.

Many provisions of S. 2 address the appearance and possibility that campaign finances are compromising the integrity of government. Public financing reduces the reliance of members of Congress on private funds. The limits on total PAC contributions will diminish the role of PACs in financing campaigns. And the ban on counting gifts received after an election and prior to January 1 in the year preceding the next election as part of the qualifying threshold to receive public financing should reduce the making of campaign contributions at times when they seem intended to influence the legislative process.

In this respect, however, S. 2 could be strengthened. The Supreme Court has recognized that campaign contributions can be restricted to avoid the actuality or appearance of corruption. I would urge the committee to revise the contribution limitations in the Federal Election Campaign Act to prohibit public officials or candidates from receiving any campaign contributions until twelve months before the scheduled primary election in which candidates will be selected for the next general election. Since only \$250,000 in private funds is required to qualify for public financing, this restriction would not

reduce the ability of serious candidates from amassing huge campaign war chests during their terms in office. It would, however, eliminate the making of contributions during a considerable period while members of Congress are actually deliberating; and it would also reduce the use of early campaign fund raising to discourage opponents from entering the next campaign.

The appearance and possibility of wrongdoing in campaign contributions may be the most serious problem that must be addressed in any campaign reform legislation.

The third major concern of campaign finance reform is to assure that campaigns are generously funded to assure vigorous competition for public office. Unfortunately, when Americans think of checks and balances, they turn to the lessons of high school civics that quite correctly identify the scheme of the Framers that divides power among three branches of government, each imposing checks on the other. But as we have evolved into a nation in which all of our federal officials are elected--in sharp contrast to the original constitutional scheme in which only the House of Representatives was elected--we must recognize that vigorous political campaigns are a partner to the separation of powers in the system of checks and balances. Only if campaigns are generously financed will there be a full opportunity for candidates to present to voters their credentials for office, their programs and policies, and their criticisms of the opposing candidate and political party.

This is the most overlooked feature of our politics. There is entirely too much complaint from citizens and from the media about the cost of campaigns. In fact, however, the cost of American political campaigns is modest. It has been shown repeatedly that we Americans spend less for all political campaigns for federal, state, and local office than we spend to advertise soapsuds or other commercial products.

Taking even the most widely criticized campaign for the United States Senate in 1984--the campaign in North Carolina--Senator Helms spent \$16.5 million. There were about 4.5 million persons of voting age in North Carolina in 1984. Hence, Senator Helms spent only about \$3.66 to reach each potential voter. Considering the cost of a couple of mailings, a telephone call to canvass each voter and then to encourage favorable voters to go to the polls, and radio and television advertising, an expenditure of \$3.66 to appeal to each voter may not be excessive. Senator Helms' opponent, Governor Hunt, spent about \$2.11 per voter in the same campaign.

These examples are, of course, the extremes. In my own state of Michigan, where Senator Carl Levin was reelected after a closely contested campaign in which he spent about 53 cents per voting-age person.

Indeed, an examination of the top 25 spending campaigns for the United States Senate in 1984 shows that most of them involved only modest expenditures to reach each voter. In five campaigns expenditures were more than \$2.00 per voting age person; and these campaigns might be

viewed as expensive. Two more campaigns involved expenditures of between \$1.50 and \$2.00 per voter, while an additional four campaigns spent between \$1.00 and \$1.50 per voter. The largest number of candidates--that is, eleven campaigns--spent between 50 cents and \$1.00 per voting age person. Three campaigns spent less than 50 cents per voting age person. Remembering the high cost of mailings, telephone canvassing, and mass media advertising, most of these campaigns spent relatively little to reach each voting age person in their respective states. From this perspective, then, campaign costs are "high" in only a few campaigns in a few states.

The great danger in enacting contribution limits is that we will dry up the funds necessary to wage vigorous political campaigns. There is now a very considerable body of scholarly work that shows that the greatest impact of expenditure limits is candidates who challenge incumbents. Those who hold office have ample opportunity to make their names and records known during their term of office. But challengers typically do not have wide recognition of either their names or their political programs. Hence, as they are able to reach the public with this information, voters become more aware of their choices at the polls. And this tends to produce a more vigorous electoral system.

S. 2 directly addresses the problem of providing sufficient money for vigorous political campaigns by providing public financing of general election campaigns for the United States Senate. It is a testimonial to the political rectitude of the bill's 30 incumbent Senate cosponsors that they are prepared to assist challengers by providing funding for their campaigns.

At the same time, S. 2 also threatens to weaken competitive politics by setting expenditure limits on Senate campaigns. Expenditure limits may suppress opposition by capping campaign spending at a level that prevents challengers from gaining visibility for their records, their programs, and their criticisms of incumbent officeholders.

It is fair to ask, therefore, whether S. 2's expenditure limits are reasonable. A very simple analysis suggests that they are not. The problem posed by S. 2 is that its expenditure limit of 25 cents per voting age person is unrealistically low in comparison to the cost of reaching voters and also in comparison to present campaign financing practices. The addition of a \$600,000 "add on" to the 25 cents per voting age person formula is insufficient to set S. 2's spending limits at a level that allows vigorous campaigns.

This becomes clear when S. 2's formula for public financing and expenditure limits is applied to the 1984 expenditures of all candidates for the United States Senate who spent more than \$500,000. This analysis tends to overstate the restrictiveness of S. 2's expenditure limits somewhat because the 1984 expenditure figures are for the whole campaign season--primary elections as well as general elections--rather than for just the general elections to which S. 2 would apply. On the other hand, using 1984 figures does not take into account expenditure increases that would be needed to meet inflation.

My analysis therefore is only a rough approximation of the effects that S. 2 might have. But since we presently do not require reporting of general election and primary election expenditures separately, there is almost no way to do a more precise analysis.

In fourteen of the fifteen Senate campaigns in 1984 where both an incumbent and a challenger spent more than \$500,000, S. 2's expenditure limits would have greatly reduced spending by incumbents. While this might be desirable, it is important to remember that incumbents' expenditures are not as important in political campaigns as challengers' expenditures. Incumbents already have extensive visibility; it is challengers who need to spend money to gain public attention and support. It is most important to note, therefore, that in eight of these fifteen campaigns, the expenditure limits would have also reduced the spending of challengers, in all but one case by a substantial amount. In the other seven races, the public subsidy in the amount of the expenditure limit would have helped the challenger, but in only two of these cases would the help have been substantial.

S. 2's expenditure limits would have been even more starkly felt in races where there was no incumbent. In these campaigns both candidates have a need to gain visibility, since neither has the advantages of incumbency. In all four open-seat races for the Senate in which the candidates of both major parties spent at least \$500,000, S. 2's expenditure limits would have curtailed spending by both candidates. The reduction of expenditures would have been very substantial for five of the eight candidates in these races.

This imperfect analysis strongly suggests that the expenditure limits in S. 2 are too low to allow vigorous political campaigning by nonincumbents and by candidates in open-seat races.

There are several possible remedies for this problem. The expenditure limits could simply be abolished, but a cap of \$250 could be put on all contributions. This would allow campaign expenditures to rise above the public subsidy but would assure that all such additional funds were received in amounts that do not threaten the integrity of politics or promote inequality among citizens.

It may well be, however, that public pressure compels the enactment of expenditure limits. If that is the case, then the proposed expenditure limits should be substantially increased. The increased expenditures could be supported either by additional public subsidies or by allowing the difference between the presently proposed subsidy and the higher expenditure limit to be funded by small contributions.

If expenditure limits are to be retained, how high should they be set? That is a difficult question of judgment. At a minimum, additional expenditures of \$1 million or 20 cents per voting age person, whichever is higher, should be allowed. This would authorize additional expenditures of \$1 million in 41 states and would permit greater additional expenditures in nine states. California's expenditure limit would rise by \$3.7 million.

Before this proposal is too quickly written off as extravagant, it should be noted that in California these additional expenditures could be funded if just 14,500 of the state's 18.6 million voting age persons contributed \$250. In the states where an additional \$1 million in expenditures would be authorized, only 4000 contributions of \$250 would be necessary.

While these additional expenditure authorizations could also be met by increasing the public funding for Senate campaigns, there is a good reason to prefer modest private gifts to reach this goal.

The fourth major concern of campaign finance reform is to permit citizens to participate in the political process. Making campaign contributions is an important form of political participation. Indeed, in the modern time it is becoming increasingly important. It is no longer easy for a citizen to involve himself in traditional grassroots politics. Campaigners are reluctant to go door-to-door in a society where neighborhoods are unsettled and neighbors no longer known. And citizens no longer welcome door-to-door campaigners, because this disrupts households where family members may be working staggered shifts and because of a growing fear of strangers. Even telephone canvassing has become more difficult because our homes are saturated with calls from commercial enterprises. Moreover, the busy citizen recognizes that a financial contribution may be the most effective assistance he or she can give to a political candidate, because it permits media purchases or mass mailings.

Within carefully set limits, contributions by individuals can constitute an important opportunity for citizens to participate in political affairs. The key element in structuring such opportunities is to set contribution limits low enough so that they allow participation while still preventing wealthy citizens from exerting excessive influence in the political process. Contribution limits of \$250, as set for certain purposes in S. 2, easily advance both objectives.

The most serious defect in our presidential campaign regulations, in my view, is precisely the prohibition on individual contributions during the general election campaign. This cuts off opportunities for citizen participation. Moreover, it has invited certain independent expenditure committees to appeal for individual contributions on the ground that such contributions to the citizen's candidate are prohibited. These independent expenditure committees often use a disproportionate share of funds raised for administrative expenses and fund raising costs, however, and their campaign appeals have often degraded the quality of political discussion in this country. If interested individuals could contribute directly to candidates, the appeal of independent expenditure committees would be somewhat blunted.

Mr. Chairman, I therefore hope that as S. 2 leaves your committee, it will contain provisions that will permit interested individuals to participate in our political process by making very modest contributions to the campaigns of candidates they support. This opportunity for political participation would appear to be as American as the proverbial apple pie.

A fifth major concern in campaign finance reform is to assure a continuing role for our political parties. Although the role of parties has declined in the modern era, parties still play important roles in politics and government. They help to recruit candidates, and increasingly they provide technical assistance and financial support to those who are running for office on the party ballot. Parties also increasingly engage in "institutional advertising"--that is, interelection advertising with party themes. Parties have long been important in organizing the government.

S. 2 preserves the role of political parties by leaving two important provisions of the Federal Election Campaign Act untouched. First, national level political committees are permitted to make expenditures on behalf of a Senate candidate in the amount of two cents per voting age person in the base year of 1976, with that expenditure limit increased annually by the percentage increase in the Consumer Price Index. In 1984, this special party spending limit to support federal office candidates ranged from \$44,000 in the smallest states to \$886,900 in California. An equal amount can be spent on behalf of Senate candidates by state and local political party committees.

Political parties can also play an important role in campaigns by making expenditures for so-called "grassroots" campaigning. The 1979 Amendments to the Federal Election Campaign Act allow state and local political parties to spend unlimited amounts for campaign brochures, handbills, posters, yard signs, party tabloids, campaign pins and similar grassroots campaign materials. Parties are also permitted to make unlimited expenditures for slate cards and sample ballots involving three or more candidates.

In one respect, however, S. 2 does not go far enough to allow political parties to participate fully in congressional campaigns. The Federal Election Campaign Act presently permits state and local party committees to spend unlimited amounts for voter registration and get-out-the-vote drives on behalf of candidates for President and Vice President. There is no reason why political parties should not be able also to conduct these important voter mobilization activities on behalf of candidates for the Senate and the House of Representatives. I would hope that when S. 2 leaves this Committee, Mr. Chairman, it would include an amendment to 2 U.S.C. s. 431(9)B(ix) allowing political parties to make expenditures on registration and get-out-the-vote activities in congressional campaigns.

A sixth major concern in campaign finance reform is to assure that independent expenditure committees are genuinely independent and also that they are held accountable for their campaign activities. We must recognize that independent expenditures are an important form of constitutionally protected expression. They allow those outside candidate organizations and political parties to participate in the discussion of candidates and issues. But the assumption is that independent expenditure committees are not operating as arms of candidates and that they are in some way held accountable for their campaign activities.

S. 2 addresses both needs. Its extensive definition of what constitutes coordinated expenditures assures that an independent expenditure committee is not operating in concert with candidates by consultation with the candidate or his campaign organization, by using the same political consultants, by coordinating campaign efforts through a political party or its staff, or by following a candidate's campaign strategy that it obtains from a third party. These restrictions on independent expenditure committees are long overdue.

In addition, S. 2 requires independent expenditure committees to disclose their identity and their sponsoring organization, if any, in campaign advertising and campaign materials. In nonelectronic campaign media or materials, independent expenditure committees are further required to report that their activities are not subject to any expenditure limits.

I believe that public accountability of independent expenditure committees can be further heightened. One of the troubling aspects of independent expenditure committees has been their capacity to raise money nationwide and then concentrate the spending of these large sums in a handful of congressional or senatorial campaigns. While this is almost certainly legal and may even be desirable, the voters in each district and state are entitled to know when an independent expenditure committee is using vast sums of money from outside the jurisdiction to influence the campaign within the district or state. Consequently, Mr. Chairman, I would recommend that S. 2 be revised to require independent expenditure committees to report in all advertising, campaign materials, and so forth if more than 50 percent of their funds are raised outside the district or state in which they are campaigning for or against a candidate for federal office.

The present provisions of S. 2 regulating independent expenditures and the further amendment that I have proposed are especially important when taken in light of S. 2's limits on PAC participation campaigns. It has repeatedly been argued that any limits on PACs will simply divert them from making campaign contributions to engaging in independent expenditures. But careful, restrictive definitions of what are legitimate independent expenditures will prevent PACs from undertaking independent expenditures in concert with candidates, and this will help to diminish the influence that PACs have in our governmental process.

Finally, Mr. Chairman, there will be a variety of problems that S. 2 does not and probably cannot address. The foremost of these is the financing of primary election campaigns. Critics of S. 2 will say that PACs will simply divert their contributions from the general elections to the primaries. Excessive campaign spending will now occur in nomination campaigns rather than general election campaigns, it will be said. And we should acknowledge that these criticisms have some merit. But reduced contribution limits for PACs and an aggregate contribution for total PAC contributions will diminish to some extent the redirection of PAC spending from general elections to primaries. Moreover, participation in primaries is a riskier business for PACs and for big contributors than is participation in general elections. More restrictive definitions of independent expenditures will also

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diminish the opportunity for independent expenditure committees to shift their spending from the general election to the primary.

Most important, however, it is important for Congress to begin to resolve the campaign finance problem now facing us. Public financing in general elections is an excellent beginning. After S. 2 has had an opportunity to work, Congress can consider what further steps might need to be taken.

We can also look for guidance to several states that enacted public financing of general election campaigns almost a decade ago. Wisconsin and Minnesota provide public financing for executive, judicial, and legislative offices. The public financing plan works only in the general election. Despite complaints that this would simply move campaign financing abuses from the general election to the primary, there has not been such a pattern of abuse that it has been necessary to extend public financing to the primary campaigns.

In summary, then, Mr. Chairman, I strongly urge this Committee and the Senate to adopt S. 2. I have suggested a few modifications that will set expenditure limits at a level that assures vigorously competitive campaigns, that allows participation by individuals in financing campaigns, that extends the role of political parties in campaign finance, and that further tightens the restrictions on independent expenditures. I hope these suggestions will be helpful to your Committee as you revise S. 2 for reporting to the Senate.

I appreciate the opportunity to appear before your committee today.

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Senator DECONCINI. Thank you, Dr. Adamany.

Let me say that I take it from your statement that you think we are wise if we proceed here to not to try to tackle the primary election area, and kind of crawl first before we run any further. Is that a fair statement?

Dr. ADAMANY. That is certainly my view.

Senator DECONCINI. And, secondly, your suggestion that we increase the level of spending is certainly one that I think needs consideration. If we have public financing, there may be a reticence or reluctance on the part of the public if they don't understand it to accept that, how would you suggest we get over that? We have got to face it here, as the Senator from Alaska pointed out, the need for education. Maybe it does not make too much difference unless you educate them. If you just educate them on the need for public financing, it may not make much difference how much it costs. But I think it does.

Do you have any suggestions on that?

Dr. ADAMANY. Well, Senator, I would take the view that, given the budgetary constraints that you are faced with and the inevitable opposition to spending still more money through public financing on campaigns, that you provide a strong, basic public financing plan of the kind you have proposed in S. 2, and that you permit additional expenditure not from public funds but from very modest levels of private giving—perhaps as low as the limit of \$250.

Senator DECONCINI. Does that not favor incumbents, then?

Dr. ADAMANY. I think those limits would be low enough so that—

Senator DECONCINI. What limit would you think would be appropriate if you did do that, if you had this bill, S. 2, and that you also permitted voluntary small contributions?

Dr. ADAMANY. I would set it very low. I would set it at a level of \$250. Let me say that that has the additional advantage of allowing widespread citizen participation in campaigns, which this bill cuts off. I want to make the point that it is not as easy to be active in politics if you are a committed citizen as it was ten years ago.

In metropolitan areas like ours, door-to-door canvassing is disappearing. People do not want you on their doorsteps any more, and so writing a small campaign check is really one of the few ways left to participate effectively.

Senator DECONCINI. Dr. Adamany, do you concur that PACs have played also a constructive role in educating many employees vis-a-vis their newsletters, forums they hold where candidates speak, even though they do represent an obvious special interest?

Dr. ADAMANY. Yes. I think that the political education function of political action committees, the training of many labor union leaders and corporate employees in how to take part in campaigns has been a very constructive contribution.

There is, on the other hand, some indication in studies, public opinion studies, that those who contribute to political action committees have a relatively low interest in and relatively low information about politics. It is not at all clear that the public education functions of PACs and the contribution raising and financial spending of PACs are very closely linked together.

Senator DeCONCINI. Well, my experience in Arizona is quite the contrary. Whether it is Arizona realtors or bankers or a Honeywell PAC or anyone else, having talked to them and had a chance to individually speak to those who join up and sign up, they are quite well educated. And, obviously, they get the industry position on national bills, but I find PAC's to be very educational for their members. My encouragement has always been expand; you know, get more members to join. They are very interested in doing that, but maybe there are some PACs that do not spend any time trying to educate their employees, but just tell them they ought to contribute because this is good for the company, it is good for your job, and forget anything else. But I do not find that true with many of the Arizona PACs.

Doctor, thank you for your very careful study of this legislation. I greatly appreciate it, and it is very helpful to us. It is appropriate that we have the suggestions prior to our markup next week.

Our next witness is Dr. Michael Malbin, Visiting Professor and Research Associate, University of Maryland. Doctor, we welcome you here.

Dr. MALBIN. Thank you, Senator DeConcini. I appreciate that you will be putting the written testimony in the record.

Senator DeCONCINI. We will. Without objection, all the testimony will be in the record.

**TESTIMONY OF DR. MICHAEL J. MALBIN, VISITING PROFESSOR
AND RESEARCH ASSOCIATE, UNIVERSITY OF MARYLAND,
SILVER SPRING, MD**

Dr. MALBIN. My name is Michael Malbin. As you have indicated, I am a visiting professor of political science at the University of Maryland, also an adjunct scholar at the American Enterprise Institute. I have written numerous articles and two books on campaign finance.

There is, as you have indicated, a lot of unhappiness with the present campaign finance system. I do not need to rehearse that here in verbal testimony. It is too well known. Most of the unhappiness is understandable. To some extent, it is justified. Nevertheless, what I do want to say is that it is one thing to feel unhappy, and it is quite another to find a set of legislative responses that, in fact, address the problems they are supposed to address.

I am afraid Congress has a bad habit of writing campaign finance laws that do not do what the members expect. If I could make only one plea in this testimony, it would be to avoid making that mistake this time around. Try to get beyond dwelling on what you do not like in the present system, and then think also, with great care, about whether the proposals you have, one, in fact, will do the job the sponsors say that it will do; and, two, whether they are going to have other consequences that may be at least as bad as the ones they are trying to address.

Now, the major bill before the Committee is the Boren-Byrd bill, or S. 2. In my opinion, S. 2 is a bill that will fail to achieve its intended objectives, and it will have consequences that are extremely undesirable.

In this testimony, I am going to begin by laying out the problems first in the public finance section and then in some other provisions, and then I am going to close with a short list of alternative proposals that I think would do a better job of addressing the real ills of the system.

First I will talk about the public finance and expenditure limits sections. On the public finance aspects of S. 2, I really have little to say. Some of S. 2's critics oppose public funding and the use of public money in principle; I do not. In my prepared statement I give a long list of public expenditures that I think would be very helpful to the political system, such as tax credits and so forth. There is a long list of them.

My objection to the public finance section in S. 2 is, as I say, not an objection to the fact of public money. It is fundamentally an objection to spending limits because spending limits, in my opinion, strongly favor incumbents.

I do give a table in the statement that lists Senate campaign spending in 1985-1986, together with S. 2 spending limits for challengers. This table only lists challengers who defeated sitting incumbents, but at the appendix to the statement, I give the data for all the states in 1985-1986.

Just let me say a couple of points about those numbers. First of all, every one of the challengers who won, except one—all but one of the challengers who defeated a sitting incumbent—spent less than the incumbent they beat. Now, that continues a pattern ever since the public disclosure.

Since 1976, all but four defeated Senate incumbents out-spent the challengers who beat them. That is, the loser, the incumbent, spent more; the winner, the challenger, spent less in all of the cases but four.

Now, what that tells you is that challengers do not need to spend the same amount as incumbents to win. What challengers need is enough money to bring their case to the voters—not the same amount as incumbents, but enough money.

Well, how much is enough? Unfortunately, you cannot be sure. It depends on communication costs in a particular state. It depends upon the availability of free media. It depends upon the prior offices held by the challenger. It depends upon a state's character. It depends on a host of other variables.

We just cannot be sure how much is enough, but the one thing we do know is that every one of the successful challengers in 1986 spent not just more, but spent a lot more than they would have been allowed to spend under S. 2.

You can say that same thing about just about every winning and losing candidate who was in a race that was closer than 60-40 in the 1986 election. In just about any race that was 60-40 or closer, the candidate spent a lot more than they would be allowed to spend under S. 2.

Well, you might say, but S. 2's limits would apply to challengers and incumbents equally. Isn't that okay? Doesn't that make it fine? Well, to me, that sounds a lot like Anatole France's famous line about the laws forbidding rich and poor alike to sleep under the bridges of Paris. Sure, rich and poor alike cannot sleep under the bridges of Paris. Sure, this law will apply equally to incumbents

and challengers. But incumbents are well known, and the marginal utility of a dollar spent by a well-known person is a lot less important than a dollar spent by a person who is less well known.

Incumbents are better known than challengers. Senate challengers happen to be in much better shape on the whole than House challengers, but even Senate challengers are not in as good shape as incumbents.

Now, I could go on on this point. I am not going to because Gary Jacobson is going to testify later, and he is the country's leading scholar on this particular research point. So I leave that to him. If he was not planning to address it, I urge him to do so.

The next thing I do is give you the House races that involved incumbents, and then I break the figures down by the final margins of victory. It is a list of incumbents and challengers in all races, in races where the incumbent won by 55 to 60 percent, 50 to 55, or where the incumbent loses. That is because what you are usually given in tables are just incumbents and challengers. They usually do not do it for you by margin of victory.

In the second table, if you read across the top line, the incumbents' line and the challengers' line, what you see is that what separates the few close races from the vast majority, is not how much money the incumbents raised. The incumbents are going to raise plenty of money—no concern about that. What separates the close races from the others is the money raised by the challengers.

Equalizing campaign funds would do nothing to help the vast majority of seriously under-funded challengers. But spending limits would prevent the best challengers from making their case against incumbents who start off with more than a million-dollar advantage in funds.

Well, you might ask, what if the limits were set higher than S. 2's? Press accounts say that there may be amendments to that effect next week in markup. My understanding is that there will be such amendments, but that they would not raise the limits nearly enough to meet the challengers' needs in most states. Well, could they be set high enough in principle? Sure, of course they could. But states and districts vary a great deal.

Now, once you get in the business of price fixing or setting limits, you have to make a choice. This is your choice as a Senator. If you are going to set limits, you can either set moderate limits that, by definition, will be too low for expensive states and districts and, therefore, rule out competition in expensive states and districts. I think that would be terrible. I think every state deserves the possibility of electoral competition.

Or the other thing you could do is to set the limits high enough for the expensive states and districts, and that means you have to simply swallow the excess cost for spending in the low-cost markets. That is your choice.

I do not like spending limits, but if you are going to have them, I think they have to be double the level in S. 2, not just modestly higher but doubled. Otherwise, just drop them.

The supposed evils of private financing cannot begin to match the dangers of a system in which challengers cannot afford to make their case.

Now, the next point: Everything I have said so far, as critical as it may sound—and obviously I have been critical—has involved idealistic assumptions that favor S. 2. I have assumed, for example, that S. 2 really would equalize spending. The reality is that it would not. The original bill, as the earlier witness mentioned, does not apply to primaries. Some of the bill's new sponsors, I read in the press, have seen that this is a problem, and they want to offer amendments that extend to primaries.

If you do not extend to primaries, the simple fact is that incumbents do better at raising early money. Incumbents raise a lot more than challengers, and the incumbents are going to unload their whole treasuries in the primaries. So if you do not cover primaries, then what you have done is you have written a bill that much more strongly favors incumbents than the present system.

On the other hand, what I understand the amendment will do is to put spending limits on the primaries, but not give public funds. That, I think, will probably raise constitutional questions. If it does not raise constitutional questions, what I can say is that extending the spending limits backwards to primaries would make the situation somewhat less unequal for challengers if the general election is the main contest—somewhat less unequal, I am saying. I am not saying it would make it equal. It would be somewhat less unequal because the challengers would be so much more likely to have a primary contest than the incumbents will.

But putting limits on primaries obviously would be manifestly unfair to a challenger who wants to go up against an incumbent in the primary. In that situation, what you have done basically is to make it impossible, or practically impossible to challenge an incumbent in a primary if you have a spending limit that is half the general election limit.

Now, the next point: independent expenditures. There is another idealistic assumption in S. 2. The other idealistic assumption of S. 2 is that spending in a publicly funded race can be limited to what the candidates spend. The fact of the matter is that we know from presidential elections that what full public funding does, contribution and spending limits, is to stimulate independent expenditures.

The bill tries to address this. I frankly think the way it does so is laughable. If I were running a political committee that wanted to make a political expenditure in a race where it is Smith against Jones and I favored Smith, I would put out a set of ads that allegedly favored Jones who is the candidate I oppose, and therefore trigger contributions or trigger public money for Smith. I think the way around that provision is just far too easy.

I think that in addition what you see from the presidential races is that groups do not have to go to independent expenditures. They can go to voter registration. They can place issue ads. You simply cannot, through regulation, stop political professionals from figuring out how to spend their money. They are going to do it, and they have done it in ever new ways in every presidential cycle.

So, to conclude, I think that the public funding portions of S. 2 are proposals whose time has come for a decent burial. As far as the provision that would limit the aggregate amount that a candidate could receive from PACs goes, let me just say that I think you

have to make a fundamental choice. Again, you are going to be stimulating independent expenditures.

You may decide that independent expenditures are better than PAC contributions. That is fine; that is a balancing choice you have to make. I believe the so-called PAC danger has been overblown, but let us say you think there is a real danger from PACs. Just recognize that when you put a lid on what candidates receive, there will be independent expenditures out there, and the groups most likely to engage in them are the biggest and most professional groups, not the modest sized groups that are benefited by PACs.

Now, let me just conclude and skip over a lot of material. I will conclude by saying what I think you ought to do, if I may. If you want to limit the role of PACs, I think the best approach is to use incentives to stimulate candidates to look elsewhere for money. The two best places, I think, where you ought to be trying to use those incentives are on small contributions from individuals and political parties.

I think the House Democratic Study bill, which offered a 100 percent tax credit to individuals for very small contributions to candidates in their own states, was a very positive idea. It would have done more than any other proposal I have heard to change the mix of campaign funds. It would have benefited all candidates without any of the problems that you come up with in spending limits.

Political parties also should be given more of a role. Obviously, this becomes a partisan issue. The Republicans are raising more than the Democrats; the Democrats are closing the gap. You have to do something that does not, in a way, favor one party over the other. My recommendation here would be to require media outlets to give blocks of free time to the parties and not directly to candidates. This proposal is spelled out here, but the idea would be to give the parties an important resource that is the most expensive campaign resource that candidates need.

In conclusion, the main point I want to make is that if what you use is a strategy that is based on limits, I think such a strategy is going to fail. People will find ways around the limits. Interest groups will form 501(c)(3) organizations and spend millions on voter registration the way they did in the presidential race or other forms of activity. You cannot rule this money out of politics. So the alternative, I think, is to forget the coercive approach and try to use positive incentives to change the mix of money in the system.

[The prepared statement of Dr. Malbin follows:]

STATEMENT OF MICHAEL J. MALBIN, UNIVERSITY OF MARYLAND

My name is Michael J. Malbin. I am a visiting professor and research associate in the University of Maryland's Department of Government and Politics and an adjunct scholar at the American Enterprise Institute. I have written numerous articles on campaign finance and am editor and co-author of two books on the subject, Money and Politics in the United States and Parties, Interest Groups and Campaign Finance Laws. The opinions I express here today will of course be my own.

Anyone who watches politics knows there is a lot of unhappiness with the present campaign finance system. It costs a great deal to get elected to Congress, and the easiest place for a strong candidate to raise money is often from political action committees or PACs. As a result of this unhappiness, many members of Congress, and some self-styled public interest lobbies, want to limit how much candidates spend for elections, and how much they can raise directly from PACs.

Most of the unhappiness you have heard expressed is understandable, and to some extent justified. Nevertheless, it is one thing to feel unhappy; it is quite another to find a set of legislative

responses that in fact address the problems they are supposed to address. Congress has a bad habit of writing campaign finance laws that do not do what members of Congress expect. If I could have only one plea to make in this testimony, it would be to avoid that mistake this time around. Try to get beyond dwelling on what you do not like with the present system. Think also, with great care and deliberation, about whether the proposals people are pressing on you (1) in fact will do the job the sponsors say they will do and (2) whether they will have other, perhaps unintended, consequences that may be at least as bad as the ones they are trying to address.

The major bill before this committee is the Boren-Byrd bill, or S.2. Sen. Boren is a thoughtful, well intentioned legislator who has worked on this bill for a long time. Despite my respect for the Senator, however, I am bound to say that I think S.2 fails the test I have put before you. S.2 is a bill that will fail to achieve its intended objectives and will have consequences that are extremely undesirable. In my testimony, I will begin by laying out the problems in the Boren-Byrd bill -- first in its public finance sections and then in some other provisions. Afterward, I shall suggest alternative proposals that I think would do a better job of addressing the real ills of the system.

Public Finance and Expenditure Limits

On the public finance aspects of S.2, I have little to say about the fact that funds would come from public rather than private sources. Some of S.2's critics oppose public funding in principle; I do not.

- I support giving postal subsidies to candidates and parties.
- I do not mind the congressional frank and would extend it to challengers.
- I would like to see publicly funded brochures similar to the League of Women's Voters' brochures that are now funded by a few states.
- I support the House Democratic Study Group's proposal for 100 percent tax credits for small individual contributors giving to congressional candidates from their own state.
- And I support the idea of flat grants that would give a basic floor of support to all candidates.

What these proposals have in common is that they all involve public funds, they all would work to improve competition and they all would decrease dependence on PAC money. What is missing from all these ideas is a linkage to campaign spending limits.

My objection to S.2's public financing provisions is fundamentally an objection to spending limits because spending limits strongly favor incumbents. The following table lists Senate campaign spending in 1985-86 together with S.2's spending limits for challengers who defeated sitting incumbents. (The data for all states are appended at the end of this testimony.) These spending limits were based on 1984 voting age populations, so the numbers are slightly low for most states in 1988.

Table 1

Senate Races With Defeated Incumbents
1985-86 Spending by Senate General Election Candidates
and S.2 Spending Limits for the Same States

State and Candidate	Incumbent, Challenger, Open Seat	Percent of Two Party Vote	1985-86 Spending	Proposed S.2 Limit
<u>ALABAMA</u>				
Denton (R)	I	50-	\$4,489,838	\$1,318,750
Shelby (D)	C	50+	2,199,536	
<u>FLORIDA</u>				
Hawkins (R)	I	45	6,572,532	2,732,250
Graham (D)	C	55	6,091,886	
<u>NORTH CAROLINA</u>				
Broyhill (R)	I	48	5,043,445	1,739,750
Sanford (D)	C	52	3,895,560	
<u>NORTH DAKOTA</u>				
Andrews (R)	I	50-	2,243,392	722,750
Conrad (D)	C	50+	902,094	
<u>SOUTH DAKOTA</u>				
Abdnor (R)	I	48	3,218,946	724,500
Daschle (D)	C	52	3,453,415	
<u>WASHINGTON</u>				
Gorton (R)	I	49	3,239,807	1,400,500
Adams (D)	C	51	1,905,841	

SOURCES: Campaign spending from Common Cause press release of February 13, 1987. S.2 spending limits based on 1984 Voting Age Population from 1986 Statistical Abstract.

There are a few points worth noticing about these numbers. First, all but one of the challengers who defeated sitting incumbents spent less than the incumbents they beat. That continues the pattern ever since public disclosure. Since 1976, all but four defeated Senate incumbents outspent the challengers who beat them. Challengers do not need to spend the same amount as incumbents to win. What challengers need is enough money to bring their case to the voters.

How much is enough? We cannot be sure. That depends on communications costs, free media, a state's character, and a host of other variables. The one thing we do know, however, is that every one of the successful challengers of 1986 spent a lot more than they would have been allowed to spend under S.2. The same can be said of just about every winning and losing candidate who was in closer than a 60-40 race.

But, you might say, S.2's limits would apply to challengers and incumbents equally. That sounds like Anatole France's famous line about the laws forbidding rich and poor alike to sleep under the bridges of Paris. Incumbents are well known and the marginal utility of a dollar spent by a well known person is less important than a dollar spent by a less well known person. Incumbents are better known than challengers, with Senate challengers in much better shape, on the whole, than their counterparts in House races. The following table breaks down House races involving incumbents by the final margin of victory.

 Table 2
 Average Receipts by Challengers and Incumbents
 1986 House Races

Candidate Status	All General Election Incumbents, Challengers	Incumbent Wins 55-60% (n=27)	Incumbent Wins 50-55% (n=22)	Incumbent Loses (n=6)
Incumbents	\$381,218	\$649,567	\$614,121	\$567,070
Challengers	128,024	300,196	416,609	532,970

SOURCE: Derived from data on individual candidates in Common Cause press release of April 7, 1987.

It should be clear from these numbers that what separates the few close races from the rest is not the money raised by incumbents but the amount raised by challengers. Equalizing campaign funds would do nothing to help the vast majority of seriously underfunded challengers, but limits would prevent the best challengers from making their case against incumbents who start off with more than a \$1 million advantage in office account funds.

What if the limits were set higher than S.2's? Press accounts say there may be amendments to that effect next week. My understanding is that the amendments would not raise the limits enough to meet challengers' needs in most states. Could they be set high enough in principle? Of course they could. But states and districts vary a great deal. Once you get into the business of price

fixing or setting limits, you have to make a choice: either set moderate limits that would be too low for expensive districts or set the limits high enough for the expensive districts and swallow the excess cost. I don't like spending limits, but if you are going to have them, I think they ought to be double the level in S.2. Otherwise, just drop them. The evils of private financing do not begin to match the dangers of a system in which challengers cannot make their case.

Incumbents and Primaries

Everything I have said so far, as critical as it may sound, has involved some idealistic assumptions. I have assumed, for example, that S.2 would equalize spending. The reality is that it would not. The original bill, for example, does not apply to primaries. Some of the bill's sponsors, I read in the press, have seen that this is a problem. The original bill allows everyone to raise and spend unlimited amounts during the primary. An incumbent who did not face a serious primary threat would obviously spend just about all of his or her privately raised money during the primary season to further a general election strategy. The two candidates would then get equal amounts of government money for the general election, but only after the incumbent has spent millions to tilt the race in his direction.

Under the reported amendment, primary spending would be limited for candidates who intend to accept public financing for the general. This may raise constitutional questions. If it does not, covering primaries would make the situations more fair to challengers in states where the general election is the main contest, manifestly less fair to the challenger who wanted to go up against an incumbent in the primary.

Independent Expenditures

S.2 has also embraced another idealistic assumption. It assumes that spending in a publicly funded race can be limited to the amount provided to the candidates by the Treasury. But the proponents should know full well from the experience of presidential elections that full public funding, contribution limits and spending limits all tend to stimulate independent expenditures. To address this obvious issue, S.2 provides that independent spending would trigger a public grant to the candidate whose opponent was favored. This approach is better than the clearly unconstitutional one in past bills, but it is so easy to circumvent as to be almost laughable. Imagine I run a committee that wants to make independent expenditures to help Smith in his race against Jones. Under this bill, what I should do is buy an ad praising Jones's votes on issues that I know would be harmful to his election. By placing that ad, I would assure federal funds for Smith to spend however he might wish.

But I would not even have to be this cynical. The presidential elections has taught us there are any number of activities in which a committee can engage that do not count under the law as independent expenditures. They can place issue advertising. They can work on voter registration and turnout. Etc., etc. The simple fact is that political professionals who run well heeled committees cannot be kept out of politics by whatever regulations you may write into law.

To conclude this portion of my testimony: the public finance and spending limit provisions of S.2 is an idea whose time has come -- for a decent burial. As much as the current law may be thought

to favor incumbents, this law would do so even more. The only way you could get around this would be (1) to raise the spending limits drastically and (2) to write tight regulations that would eliminate a great deal of independent campaign and voter registration activity that I consider to be basically healthy. The political cost, in my mind, is just not worth it. With that much said, I turn now to the other main provisions of the Boren-Byrd bill.

Other Provisions of S.2

The other main provisions of S.2 are similar to the ones in last year's Boren bill. One would reduce the maximum PAC contribution to \$3,000 per election. I do not feel strongly about that.

Another would limit the total amount a candidate would receive from PACs. That would simply stimulate independent expenditures, with all of the problems I have already mentioned about trying to limit this constitutionally protected form of speech. Of course, Congress may decide that it is better to stimulate independent spending than to have candidates raise too much money directly from PACs. That is a balancing or judgment call that I leave up to you. I personally believe the so-called danger from PACs has been overblown. Last year's tax bill showed that Congress is fully able to tell the PACs where to get off. But if you feel uncomfortable with PAC contributions and want to encourage the PACs to act independently of the candidates, you ought to realize that this is the choice you would be making if you adopt this aspect of the bill.

I should also point out that this choice would not be neutral with respect to the interest groups it would favor or harm. Independent expenditures are only appropriate for the biggest and best

organized PACs. Limiting direct contributions, therefore, would favor the biggest players over the modest sized ones who have been the major beneficiaries of the PAC phenomenon. The big players will be involved no matter what you do. The question is, who else will be?

The final provision I will mention would place an aggregate limit of \$2 million on what national party committees could contribute to congressional candidates. This provision would move in exactly the opposite direction from the one I think you ought to be taking. That gets me to the last section of my testimony:

What Should Congress Do?

If Congress wants to limit the role of PACs, I believe the best method would be to give candidates an incentive for relying more heavily on contributions from other kinds or sources. Specifically, that would mean small contributions from individuals and larger ones from the political parties.

Senator Dole once said there is no such thing as a Poor PAC. He was right, of course. But PACs do help modest sized players get more involved, as I have already said. More importantly, limiting PACs would do nothing to help bring new people into the system. That was the beauty of the House Democratic Study Group's proposal for a 100 per cent tax credit for small contributions to congressional candidates from the contributor's own state. I can imagine no single change in the system that would do more to change the mix of participation than this one.

Political parties should also be given more of a role than they now have. Democrats seem to be closing their fundraising gap with Republicans, but the GOP still does better than Democrats. For that

reason, any proposal would have to balance the interest of the parties to have a serious chance of being adopted.

I would suggest that all federally licensed radio and television stations should be required to turn blocks of time over to the parties to use as they wish. The blocks could be at least three or five minutes long to force more substantive messages than you get in thirty second spots. By giving the time to the parties, you would avoid the problem of deciding how to divide the time in a major metropolitan area. Let the parties and candidates work that one out among themselves. If the broadcasters protest, we should remind them that the airways are ours, not theirs. There is even a whip hand that could be held over the broadcasters right now. The broadcasters are worried that they will lose half of their band width. They say they need the full band width for future high resolution telecasts. If they need the band width for high resolution telecasts, let them keep them. But make them pay a public interest price that will help all political campaigns before you give in.

The aim here is quite simple. I recognize the legitimate concerns people have expressed about PACs, but I am convinced that a strategy based on limits will either fail or will produce serious, undesirable consequences. As an alternative, therefore, I think Congress should forget the coercive approach and turn instead toward positive incentives that would build up the role of the small giver and of the political party.

I shall be happy now to take your questions.

Appendix

1985-86 Spending by Senate General Election Candidates
and S.2 Spending Limits for the Same States

State and Candidate	Incumbent, Challenger, Open Seat	Percent of Two Party Vote	1985-86 Spending	Proposed S.2 Limit
<u>ALABAMA*</u>				
Denton (R)	I	50-	\$4,489,838	\$1,318,750
Shelby (D)	C	50+	2,199,536	
<u>ALASKA</u>				
Murkowski (R)	I	55	1,359,142	686,250
Olds (D)	C	45	412,839	
<u>ARIZONA</u>				
McCain (R)	O	60	2,161,443	1,150,000
Kimball (D)	O	40	526,056	
<u>ARKANSAS</u>				
Bumpers (D)	I	62	1,666,281	1,023,000
Hutchinson (R)	C	38	906,350	
<u>CALIFORNIA</u>				
Cranston (D)	I	51	10,888,936	5,365,750
Zschau (R)	C	49	11,467,006	
<u>COLORADO</u>				
Wirth (D)	O	51	4,087,726	1,951,250
Kramer (R)	O	49	3,683,330	
<u>CONNECTICUT</u>				
Dodd (D)	I	65	2,148,056	1,201,000
Eddy (R)	C	35	457,826	
<u>FLORIDA*</u>				
Hawkins (R)	I	45	6,572,532	2,732,250
Graham (D)	C	55	6,091,886	
<u>GEORGIA*</u>				
Mattingly (R)	I	49	4,656,944	1,651,000
Fowler (D)	C	51	2,927,322	
<u>HAWAII</u>				
Inouye (D)	I	74	870,567	788,750
Hutchinson (R)	C	26	31,716	
<u>IDAHO</u>				
Symms (R)	I	52	3,298,115	770,250
Evans (D)	C	48	2,083,183	
<u>ILLINOIS</u>				
Dixon (D)	I	66	1,863,286	2,702,500
Koehler (R)	C	34	786,386	
<u>INDIANA</u>				
Quayle (R)	I	61	1,960,920	1,592,250
Long (D)	C	39	125,600	

Appendix (Continued)

<u>IOWA</u>				
Grassley (R)	I	66	2,478,205	1,129,750
Roehrick (D)	C	34	243,762	
<u>KANSAS</u>				
Dole (R)	I	70	1,408,115	1,048,500
MacDonald (D)	C	30	NR	
<u>KENTUCKY</u>				
Ford (D)	I	74	1,183,848	1,275,000
Andrews (R)	C	26	58,260	
<u>LOUISIANA</u>				
Breaux (D)	O	53	2,978,721	1,386,750
Moore (R)	O	47	5,801,190	
<u>MARYLAND</u>				
Mikulski (D)	O	61	2,132,626	1,414,750
Chavez (R)	O	39	1,634,834	
<u>MISSOURI</u>				
Bond (R)	O	53	5,310,986	1,520,500
Woods (D)	O	47	4,354,039	
<u>NEVADA</u>				
Reid (D)	O	53	2,256,901	772,250
Santini (R)	O	47	2,640,604	
<u>NEW HAMPSHIRE</u>				
Rudman (R)	I	66	826,068	780,500
Peabody (D)	C	34	281,755	
<u>NEW YORK</u>				
D'Amato (R)	I	58	7,875,447	3,931,500
Green (D)	C	42	976,630	
<u>NORTH CAROLINA*</u>				
Broyhill (R)	I	48	5,043,445	1,739,750
Sanford (D)	C	52	3,895,560	
<u>NORTH DAKOTA*</u>				
Andrews (R)	I	50-	2,243,392	722,750
Conrad (D)	C	50+	902,094	
<u>OHIO</u>				
Glenn (D)	I	63	1,292,563	2,561,500
Kindness (R)	C	37	704,287	
<u>OKLAHOMA</u>				
Nickles (R)	I	55	3,192,100	1,213,000
Jones (D)	C	45	2,536,804	
<u>OREGON</u>				
Packwood (R)	I	63	6,182,250	1,090,250
Bauman (D)	C	37	61,954	
<u>PENNSYLVANIA</u>				
Specter (R)	I	57	5,942,287	2,487,250
Edgar (D)	C	43	3,905,572	
<u>SOUTH CAROLINA</u>				
Hollings (D)	I	64	2,201,347	1,196,500
McMaster (R)	C	36	564,477	
<u>SOUTH DAKOTA*</u>				
Abdnor (R)	I	48	3,218,946	724,500
Daschle (D)	C	52	3,453,415	

Appendix (Continued)

<u>UTAH</u>					
Garn(R)	I	73	698,848	860,000	
Oliver(D)	C	27	24,508		
<u>VERMONT</u>					
Leahy(D)	I	65	1,670,583	697,750	
Snelling(R)	C	35	1,229,741		
<u>WASHINGTON*</u>					
Gorton(R)	I	49	3,239,807	1,400,500	
Adams(D)	C	51	1,905,841		
<u>WISCONSIN</u>					
Kasten(R)	I	52	3,396,564	1,472,500	
Garvey(D)	C	48	1,264,195		

KEY: * = Defeated Incumbent

SOURCES: Campaign spending from Common Cause press release of February 13, 1987. S.2 spending limits based on 1984 Voting Age Population from 1986 Statistical Abstract.

Senator DECONCINI. Dr. Malbin, would you conclude that the public financing in existing laws for presidential campaigns is a failure and not a good thing?

Dr. MALBIN. No. Let me tell you why.

Senator DECONCINI. Is it better than it was before we passed it for presidential elections, in your opinion?

Dr. MALBIN. Everything I said would happen in a publicly funded race has happened in the presidential race. What has happened is that because parties are allowed to spend unlimited funds through State and local committees, and because only in presidential elections—you have not changed the law to extend that to congressional, it is only in presidential—and because they can do generic advertising, then the presidential candidate has an incentive to go out and raise the money through the parties, and in fact that is what they do.

Senator DECONCINI. So you think what Congress did as it relates to presidential elections is positive?

Dr. MALBIN. Yes, because the parties—if you were to take a public funding provision for congressional elections and say on top of that the parties can spend an unlimited amount in getting out the vote or whatever, fine, but that is not what you are—

Senator DECONCINI. Your conclusion that incumbents need to raise more or should not be limited on how much they can raise, is that what I understood as the first part of your testimony?

Dr. MALBIN. No. Let me—

Senator DECONCINI. Well, I gather from all of your statement there—I tried to read it here, but did not read it all—that you are concerned that the spending limits, limiting the amount that the incumbents can raise is unfair—

Dr. MALBIN. No.

Senator DECONCINI [continuing]. As well as those that limit the amount that the challenger can raise.

Dr. MALBIN. No, no, no. It is unfair to challengers. What I am saying is that the incumbents in the primaries—

Senator DECONCINI. It is unfair only to challengers.

Dr. MALBIN. In the primaries, incumbents will spend unlimited amounts—

Senator DECONCINI. I am talking about the general election now, because this bill only—

Dr. MALBIN [continuing]. And that will help them in the general.

Senator DECONCINI. Yes, but let us talk just about the general now.

Dr. MALBIN. Yes.

Senator DECONCINI. Your concern is about limiting the amount of money that challengers can spend, is that right?

Dr. MALBIN. That both can spend unequally to hurt challengers.

Senator DECONCINI. Now, if you do not limit the amount of money that incumbents can spend, we both agree that they have a great advantage.

Dr. MALBIN. Right.

Senator DECONCINI. Is that fair, for challengers to be able to—

Dr. MALBIN. Incumbents do better at raising their money, but—

Senator DECONCINI. No question about it.

Dr. MALBIN [continuing]. But——

Senator DECONCINI. And if you want to equalize it, do you not need to look towards limiting the amount that incumbents can spend?

Dr. MALBIN. No, because it does not take an equal amount of money to beat an incumbent. It takes a significant amount of money, it takes enough money, but you do not have to equalize.

Senator DECONCINI. I know you do not need to equalize it. Actually, in the last Senate races more challengers won spending less money.

Dr. MALBIN. That is what I said.

Senator DECONCINI. You know, it seems that if you put a limit on how much they could both raise, it would affect the incumbents more, and it seems to me that that is going to make a more fair election.

Dr. MALBIN. If you are known to 50 percent of the voters in the State and the incumbent is known to 95 percent of the voters in the State, there is no contest until the challenger gets known to at least 85 percent or so of the voters. If you set the amount of money too low for the challenger to get name recognition, then equality does not help the challenger, the challenger will lose.

Senator DECONCINI. The challenger cannot raise money often, is that not right?

Dr. MALBIN. No, the challenger clearly in a lot of Senate races has raised enough money to win, to become recognized and to win, but they would not be able to under the spending limits in this bill and they would not be able to if you raised it by a third or 50 percent. There is not enough money.

Senator DECONCINI. Well, in the last election, with the exception of I think South Dakota, the challengers raised half or two-thirds as much as the incumbents and they won.

Dr. MALBIN. If you look at page 4 of my testimony, they raised less than the incumbent but they raised a lot more than you are allowing in the bill.

Senator DECONCINI. Yes.

Dr. MALBIN. What I am saying is that if you equalize at a very high level, then fine, you will not hurt the challenger.

Senator DECONCINI. Take North Dakota, the challenger there spent \$902,000——

Dr. MALBIN. That is correct.

Senator DECONCINI [continuing]. And the incumbent \$2,243,000.

Dr. MALBIN. That is correct.

Senator DECONCINI. Why would we not be better off by limiting that total amount that could be spent there? It would not have any effect because we can obviously see that spending money did not make the difference in that race.

Dr. MALBIN. If the challenger cannot spend enough to become known, then that challenger does not have a chance.

Senator DECONCINI. But what is that level that is needed?

Dr. MALBIN. I am sorry?

Senator DECONCINI. What is that level?

Dr. MALBIN. I do not know, but the point is that in all of the examples here—and Conrad is the one example that is the closest to

the S. 2 limit—the challenger spent an awful lot more than the limit you are going to allow them in this law.

Senator DeCONCINI. Well, that is what I am trying to get to. What do you think the limit should be?

Dr. MALBIN. What I suggested was that you double it.

Senator DeCONCINI. That you double it. Is that what your statement says?

Dr. MALBIN. Yes.

Senator DeCONCINI. Thank you.

Dr. MALBIN. If you are going to have a limit, you should double it.

Senator DeCONCINI. Thank you. That is helpful, and I appreciate your arguments and your opposition to this bill, but I also appreciate that if we are going to pass something, we should make it as good as we can.

Thank you, Dr. Malbin, very much.

Next we will hear from Mr. Fred Wertheimer, President of Common Cause.

Mr. Wertheimer, your full statement will be put in the record, if you would be so kind as to summarize it for us due to the time restraints.

Mr. WERTHEIMER. We have some attachments that we would like to put in the record also, Senator.

Senator DeCONCINI. Okay. They will appear.

TESTIMONY OF FRED WERTHEIMER, PRESIDENT, COMMON CAUSE, WASHINGTON, DC

Mr. WERTHEIMER. I am pleased to have the opportunity to testify before the Rules Committee today on the pending proposals dealing with reform of the congressional campaign finance system. This is an issue that has been a top priority for our organization since we started in the fall of 1970, and we appreciate this opportunity to present our views.

On behalf of Common Cause, I would like to thank Chairman Ford for holding early hearings on this issue, and I also want to thank you, Senator DeConcini, for your long interest and concern about this issue and for your leadership and sponsorship of S. 2. We very much appreciate it.

We are pleased that so many members of the Committee have indicated their support for comprehensive reform and we would like to thank all the members of this Committee who have cosponsored S. 2.

We have long supported comprehensive overhaul of the laws that govern congressional campaign financing. We strongly support the presidential system and believe a similar system of voluntary spending limits tied to partial public financing should be established for congressional campaigns. We also strongly support the establishment of limits on the total amount of PAC contributions a congressional candidate may accept. In this Congress, we have endorsed and strongly support S. 2, comprehensive legislation that contains the essential ingredients that we feel are necessary.

Shortly before leaving office last year, the former Chairman of this Committee, Senator Charles Mathias, said ultimately, I be-

lieve, that Congress must come to the conclusion that the problem of money in campaigns will not be solved until we find a way to limit massive campaign expenditures, and the only means the Supreme Court has left us to do that is through a system of public financing.

Another Senator who recently left the Senate, Senator Barry Goldwater, who has endorsed S. 2, has said the following: "As far as the general public is concerned, it is no longer we the people, but PACs and the special interest they represent, who set the country's political agenda. Our Nation is facing a crisis of liberty if we do not control campaign expenditures. We must prove that elective office is not for sale."

Senator Robert Dole has said in the past about the role of PACs in campaigns, "When these political action committees give money, they expect something in return other than good government. It is making it much more difficult to legislate. We may reach a point where if everybody is buying something with PAC money, we cannot get anything done."

The present campaign finance system for Congress is not fair. It costs too much money to get elected and too much of the money contributed, in particular too much of the money contributed by PACs, goes to incumbents. Spending in Senate races has increased almost five-fold, from \$38 million in 1976 to \$178 million in 1986. In the 1986 elections, Senators seeking reelection raised and spent on an average nearly twice as much as their challengers. Incumbents out-spent challengers in 26 out of 28 races.

PAC contributions to Senate candidates have grown from \$5.4 million in 1976 to \$45 million in 1986. During the last two years alone, PAC contributions to Senate candidates increased by 63 percent. There are now 24 Senators serving in the United States Senate who raised more than \$1 million each from PACs in their last campaign.

In the House of Representatives, we have seen similar kinds of growth. PAC contributions to House candidates quadrupled over an eight year period, from \$22 million to \$84 million. In the last election, House incumbents received \$65 million from PACs, compared with \$8 million for challengers. That is a ratio of 6-to-1. Today, almost half of the Members of the House of Representatives received 50 percent or more of their money in their last campaigns from PACs.

There is a fundamentally better way to finance our congressional elections, and it is the system that already exists for presidential elections. In 1985, the Commission on National Elections, headed by former Secretary of Defense and Republican Congressman Melvin Laird, and former Chairman of the Democratic National Committee Robert Strauss, concluded:

Public financing of presidential elections has clearly proved its worth in opening up the process, reducing undue influence of individuals and groups, and virtually ending corruption in presidential election finance, and this is the issue facing the Congress today, as it was in 1974. Presidential public financing has worked. There are problems. There are problems that can be corrected, but it has worked and it is a night and day improvement over the system that we used to have. Now Congress faces the choice of whether to adopt a similar system. In 1974, the Senate voted twice to do that, once in 1973 and once in 1974. The House rejected it and as a result we have seen a system grow on the congressional side that is totally out of

control, that sees people running for the Senate spend as much as \$17 million, that sees \$130 million in PAC contributions coming in. We have two fundamentally different systems in America for financing our Federal elections, a presidential system which works and a congressional system which is a disaster for the country, for the Congress, and for the members who serve here.

In the last three elections, the presidential system, 34 out of the 35 major party candidates who ran used the system. The system has served to check spending in presidential campaigns. In 1972, President Nixon spent \$62 million. If you adjust that just for inflation, not for any increased costs, you go from \$62 million to \$153 million in the 1984 election, and yet President Reagan won the 1984 election with \$68 million spent by the candidate and, of course \$68 million spent, most of it from public funds; President Nixon's \$62 million in 1972 all came from private sources and direct contributions to the campaign.

During the past three presidential elections, Democratic candidates have accepted \$142 million in public funds from the presidential system. Republican candidates have accepted \$127 million from the presidential system. During that same period, Republicans accepted a total of almost \$12 million to finance their national conventions; Democrats accepted \$11.5 million to finance their national conventions. Both parties have accepted very substantial sums of money for their presidential campaigns and for the presidential nominating system, and that system has basically been the heart of our presidential election since 1976.

The congressional finance system established by S. 2 is similar to the presidential public financing system. We strongly endorse it. We believe its use of grants as an approach for Senate races is the correct way to go, particularly keeping in mind that the fund raising demands have grown in the Senate. We believe that the independent expenditure provisions are important and will deal with the problem.

We disagree with Mr. Malbin who assumes you can simply walk in and be cute and lie. As we read this statute, it requires everyone who makes an independent expenditure to certify under penalty of perjury which candidate they are actually for and against. That is something that can be defined easily. People raise money to get this money, so this idea that you can take it we reject. There is a stiff penalty for doing it.

We believe the investment of public funds in congressional campaigns will produce important results for the Nation. These include restored public confidence in our electoral and congressional decision-making processes, Members of Congress who are less distracted and driven by fund raising needs, and more competitive elections.

We believe the aggregate PAC limit is essential. We believe the bundling language is essential, and it must be strong language to deal with the bundling problem, otherwise the existing contribution limits and any new limits that are enacted are going to be evaded.

There is another serious problem not covered by this bill. It is the issue of soft money. We strongly urge this Committee to add provisions to deal with the soft money problem, to stop an abuse which is the biggest single problem now in the presidential election

system, an abuse where money illegal in Federal campaigns is being channeled into those campaigns. It can be stopped and it should be stopped.

This is the bicentennial Congress and it faces right now in the consideration of campaign finance reform the single biggest integrity issue facing America and the political process. This is the largest political scandal we have seen in this country in years. It is not an individual scandal, not a personal scandal, it is a systemic scandal. We have a system that is not serving the country and what we believe, and more and more Members of Congress now feel, is that it is not only not serving the country but not serving this institution and their ability to function. The opportunity is here now and we strongly urge this Committee to move expeditiously on this legislation and bring it to the floor so the bicentennial Congress can be an historic Congress on this most basic of integrity issues.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wertheimer follows:]

STATEMENT OF FRED WERTHEIMER, PRESIDENT OF COMMON CAUSE

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to testify before the Rules Committee on proposals to reform the system of financing congressional campaigns. The campaign finance reform issue has been a top priority for Common Cause over the past fifteen years, and we appreciate the opportunity to present the Committee with our views.

On behalf of Common Cause, I would like to thank Chairman Ford for holding early hearings on this issue. We are pleased that so many Members of the Committee have indicated their support for comprehensive campaign finance reform. We also would like to thank the Members of this Committee who have cosponsored S. 2, the Senatorial Election Campaign Act.

Common Cause has long supported comprehensive overhaul of the laws that govern the financing of congressional campaigns. We strongly support the presidential public financing system and believe that a similar system of voluntary spending limits tied to partial public financing should be established for congressional campaigns. We also strongly support the establishment of limits on the total amount of PAC contributions a congressional candidate may accept. In this Congress, we have endorsed S. 2, the comprehensive legislation introduced by Senators Boren (D-OK) and Byrd (D-WV) that includes these essential elements.

We believe that the need for major campaign finance reform is more pressing now than ever before. As the recent elections underscored, spending for congressional campaigns has reached record heights. By placing congressional office increasingly out of the reach of citizens lacking considerable financial resources

or the ability to raise large sums from private sources, and by demanding an enormous commitment of candidates' time and attention to fundraising activities, soaring campaign spending is changing the very nature of elections and our political process.

The integrity of our electoral and congressional decision-making processes are also being seriously undermined by the proliferation and growing influence of political action committees (PACs). PAC dollars generally are given by special interest groups to gain special access and influence in Congress. PAC contributions often are made with a legislative purpose in mind. A larger and larger proportion of candidates' campaign chests are composed of PAC contributions. The increasingly prominent role played by PACs in financing congressional campaigns is undermining public confidence in the system of electing Members of Congress and in the congressional decision-making process.

Common Cause believes that the time is ripe for Congress to act to address these dangerous problems. Momentum for reform of our campaign finance laws has been building throughout the country. An increasing number of Members of Congress, tired of the drain on their time and energy demanded by non-stop fundraising and concerned about the implication of escalating spending and increasing dependence on PACs, are joining the call for major campaign finance reform.

S. 2 would limit the total amount of PAC contributions a candidate can accept and would establish, for Senate general election campaigns, a voluntary system of overall spending limits and limits on the use of personal wealth along with partial public

financing. The legislation has already attracted a strong outpouring of support from the public and from Congress. Forty-four Senators representing a wide cross-section of views have already cosponsored the bill. A broad-based coalition of 55 national groups has also endorsed the legislation. And a wide range of newspapers, based in all regions of the country, has echoed the call for enactment of S. 2. (We request that a list of the groups and newspapers which have endorsed S. 2 be included in the formal record of this hearing.)

We strongly urge the Rules Committee to move forward with S. 2 as soon as possible so that the full Senate and House will have the opportunity to take action on it this session.

The Case for Reform: Campaign Spending

"Our nation is facing a crisis of liberty if we do not control campaign expenditures," now-retired Senator Barry Goldwater (R-AZ) has said. "Unlimited campaign spending eats at the heart of the democratic process." Senator Goldwater has endorsed S. 2.

In 1974, the Senate passed legislation that would have established for congressional elections a system of public financing and spending limits, similar to that proposed in S. 2, but the House killed that bill. At that time, Congress did enact legislation to establish spending limits -- without public financing -- for congressional campaigns when it also enacted spending limits with public financing for presidential candidates.

In its 1976 ruling in Buckley v. Valeo, the Supreme Court

upheld the constitutionality of spending limits as part of a system providing public financing for presidential candidates but the Court struck down the spending limits enacted for congressional races because they were not tied to any public financing system. To enact constitutionally acceptable legislation establishing spending limits for congressional elections, it must be done as part of a voluntary system that includes public financing.

"Ultimately I believe that Congress must come to the conclusion that the problem of money in campaigns will not be solved until we find a way to limit massive campaign expenditures," former Senator Charles Mathias (R-MD) said shortly before he left office. "And the only means the Supreme Court has left us to do that is through a system of public finance."

Not surprisingly, spending for congressional campaigns has soared in that last decade. In just 10 years, spending in Senate races has increased almost five-fold, from \$38.1 million in 1976 to \$178.9 million in 1986. In 1975-76, Senate winners spent an average of \$610,026; in 1985-86, Senate winners averaged \$3 million each in campaign spending. In one state, the two 1986 Senate candidates spent a combined total of more than \$22 million on their campaigns; in another, the two Senate candidates' total spending topped \$12 million.

Spending in House races has also soared in recent years. In the last decade, spending in House races has more than tripled, growing from \$60.9 million in 1975-76 to \$194.1 million in 1985-86. In 1975-76, House winners spent an average of \$87,356; in

1985-86, House winners averaged \$329,265 each in campaign spending.

Spending by incumbents has far outstripped spending by challengers in elections held during the past decade. In the 1986 elections, Senators seeking re-election raised and spent on average nearly twice as much as their challengers; incumbents outspent their challengers in 26 of 28 races. House incumbents in the 1986 elections outraised challengers on the average by 3 to 1 and outspent them by 2.6 to 1.

The enormous expenditures involved in running for Congress threatens to alter the very nature of congressional office. Many Members of Congress, faced with the necessity of raising large sums of money for their next race, must devote substantial amounts of their time and energy to fundraising -- time and energy that could be spent on activities that would better serve their constituents. As Senate Majority Leader Robert Byrd (D-WV) has said, "To raise the money, Senators start hosting fundraisers years before they next will be in an election. They all too often become fundraisers first, and legislators second." Congressional business too often takes second place to fundraising demands. As Senator Howell Heflin (D-AL) has commented, "We take a break whenever somebody has a fundraiser."

The escalation in campaign spending also threatens to change the nature of campaigns and the electoral process. The burdens of fundraising absorb a considerable amount of most candidates' time and energy which, during a campaign, could be better spent addressing the issues or on the campaign trail dealing with

constitutents. These fundraising demands have also sharply diminished the appeal and lustre of public service for many, including experienced incumbents as well as individuals contemplating elective public office.

The massive sums being spent for campaigns is also shutting out challengers who are without the built-in fundraising base of congressional incumbents and may lack vast personal financial resources or are unwilling or unable to raise large sums from outside sources. As former Senator Barry Goldwater (R-AZ) has stated, "What are we doing? Are we saying that only the rich have brains in this country? Or only the people who have influential friends who have money can be in the Senate?"

Finally, the need to raise large amounts of money to wage a competitive campaign increases candidates' dependence on special interest money. As Speaker of the House James Wright (D-TX) has said, "The last time I had an active campaign against myself, I raised from 4,000 different contributors money to campaign, but face it, I got a lot of money from some of these PACs. Now, if you're going to win, it almost has become essential that you do so."

In short, the ramifications of unlimited congressional campaign spending pervade and threaten virtually every aspect of congressional campaigns and, ultimately, the nature of representation in Washington. As Senator Tom Harkin (D-IA) has summed up, "The average cost of winning a Senate campaign in 1984 was \$3 million. What that means to an incumbent is, at best, that he or she must spend an inordinate amount of time fundraising --

time that could and most likely should be spent on Senate business. What that means to a challenger is that he or she may be discouraged from running for office or will run and be unable to effectively compete for sufficient funds without seeking out funds from a wide variety of special interests. And what it means to the public is that the average citizen's voice will not receive its full weight because elected officials' ears are more closely attuned to wealthy contributors."

The Case for Reform: PACs

1. Background. The proliferation of PACs during the past decade largely has been the result of action -- and inaction -- by Congress in 1974. As mentioned earlier, Members of Congress at that time established a presidential public financing system but refused to pass a similar system for their own campaigns. With the role of private contributions drastically curbed in presidential politics, monied interests naturally turned to Congress.

Also, a labor- and business-supported provision contained in the 1974 amendments to the Federal Election Campaign Act authorized government contractors to establish separate "political committees." This provision, which was opposed by Common Cause, opened the door to tremendous growth in the number of PACs. Combined with the failure to enact congressional public financing, the change paved the way for the enormous growth of PAC contributions over the past thirteen years. In short, the resulting explosion in the number of PACs was no unintended

consequence of the 1974 law; the provision was intended to protect PACs and enhance their role in financing congressional campaigns, and it has.

In 1974 there were 608 PACs; today, there are more than 4000. And PAC contributions to congressional races have skyrocketed, from \$22 million for congressional races in 1976 to more than \$130 million in 1986. PAC contributions to Senate candidates have grown more than eight-fold in the past decade -- from \$5.4 million in 1976 to \$45.7 million in 1986 -- and have more than doubled in the last four years. During the last two years alone, PAC giving to Senate candidates rapidly increased. The \$45.7 million in PAC contributions to all Senate general election candidates in 1985-86 represented a 63 percent increase over the \$27.9 million PACs contributed to Senate general election candidates in 1983-84.

PAC giving to House candidates has also soared in recent years. In the past eight years, PAC contributions to House general election candidates nearly quadrupled, from \$22.9 million in 1978 to \$84.6 million in 1986.

Not surprisingly, PACs are financing a growing proportion of candidates' campaign chests. On average, the 34 Senators elected in 1986 received 27 percent of their total 1985-86 receipts from PACs; by contrast, the 33 Senators elected in 1984 received 20 percent of their funds from PACs. And fourteen Senators elected in 1986 raised more than \$1 million each in PAC contributions for their Senate campaigns. That more than doubles the number of PAC millionaires in the Senate, from 10 to 24.

Almost half of the Members of the House of Representatives

elected in 1986 -- 194 Members -- received 50 percent or more of their campaign funds from PACs. This is more than double the 94 Representatives dependent on PACs for at least half of their campaign funds in 1982. And 130 Representatives received \$200,000 or more from PACs in the 1986 election, compared with just three Representatives who received that amount in the 1980 election.

As these figures so graphically demonstrate, the 100th Congress came into office more indebted to special interest money than any other Congress in the nation's history.

2. The Unique Nature of PACs. Most PACs are arms of organized lobbying efforts. Some defenders of PACs suggest that the massive influx of PAC dollars into congressional campaigns is a healthy form of citizen participation in the political process; after all, they argue, a PAC is simply a group of people joining together to express a collective political opinion. PAC involvement in the political process, however, differs markedly from direct individual participation. First, individuals generally approach representation on a broader basis than PACs. In deciding whether to vote for a candidate for public office, an individual usually assesses that candidate by weighing a variety of factors. An individual, for instance, may be concerned about the candidate's position on education, crime, unemployment, taxes, nuclear arms and defense issues. PACs assess candidates based on a much more narrow agenda -- generally closely related to their specific legislative goals. Although contributions to PACs initially come from individuals, those contributions change their character when they go to a PAC because they then are tied to an

organized lobbying campaign and take on the narrow identity of the interest group represented by the PAC.

Second, political participation through PACs is often of a passive nature. As University of Minnesota professor Frank J. Sorauf has noted: "To understand political participation through PACs, we need also to note the nature of the participation. Some of it is not even political activity; buying a ticket in a raffle, the proceeds of which go to a PAC, a party, or a candidate, does not qualify as a political act by most standards. Even the contributory act of writing a check or giving cash to a PAC is a somewhat limited form of participation that requires little time or immediate involvement; in a sense it buys political mercenaries who free the contributor from the need to be personally active in the campaign. It is one of the least active forms of political activity, well suited to the very busy or to those who find politics strange, boring, or distasteful."

Third, the way in which PACs give is different from direct individual involvement in the political process. Common Cause found that, in nine contested 1986 Senate races, there were 494 examples of PAC double giving -- contributions to both the Democratic and Republican candidates in the same race. In the Oklahoma 1986 Senate race, 165 PACs made contributions to both the incumbent and the challenger. The fact that PACs regularly give to both candidates in a single race underscores the fact that PACs often don't contribute because of a candidate's philosophy, ideology or political party; they give in an effort to gain access and influence in Congress.

Indeed, dozens of PACs which gave to Senate incumbents during the 1986 election contributed shortly after the election to the challengers who beat them. A recent Common Cause study of the seven Senate races last year in which a Democratic challenger defeated a Republican incumbent found 150 cases where PACs contributed shortly after the election to the winning Democratic challenger after first backing the Republican incumbent during the election. Clearly, the motivating force behind these contributions -- to gain influence with whomever is the successful candidate -- is a far cry from healthy political involvement. Individual citizens, on the other hand, don't vote for both candidates, once before the election and a second time after the winner has been chosen.

And the fact that PACs regularly contribute substantially more to incumbents than to challengers only serves to underscore the nature of their involvement in the political process and their overriding interest in gaining access and influence in Congress. PACs contributed 2.3 times more to Senate incumbents in 1986 than to their challengers -- an average of \$500,000 more PAC funds for incumbents.

PACs made record investments in House incumbents in the 1986 elections, giving a total of \$65.5 million to incumbents, compared with only \$8.6 million for their challengers. On average, PACs favored House incumbents over challengers by a ratio of 6 to 1. PACs back incumbents because they are looking to gain influence with those who hold and are likely to retain office -- those who have power to exercise. Further, PACs often give to incumbents

well in advance of the campaign season -- sometimes four or five years in advance -- to seek influence or access with a Member of Congress at a time when the campaign is not in full swing. These early PAC contributions, which allow incumbent Members of Congress to build large large campaign war chests before the campaign season is underway, can be an important factor in discouraging challengers from entering a campaign against a well-financed incumbent.

3. Problems with PACs. There is a growing awareness that massive special interest giving makes a difference in the legislative process. More and more Members of Congress, from both parties and representing a wide variety of viewpoints, have commented on the influence of PAC contributions on decision-making in Congress.

- o Representative Tony Loehlo (D-CA) recently explained his view of how PACs affect congressional decision-making:
"Take anything. Take housing. Take anything you want. If you are spending all your time calling up different people that you're involved with, that are friends of yours, that you have to raise \$50,000, you all of a sudden, in your mind, you're in effect saying, 'I'm not going to go out and develop this new housing bill that may get the Realtors or may get the builders or may get the unions upset. You know, I've got to raise the \$50,000; I've got to do that.'"

- o Senate Minority Leader Robert Dole (R-KS) has said: "When these political action committees give money, they expect something in return other than good government. It is making it much more difficult to legislate. We may reach a point where if everybody is buying something with PAC money, we can't get anything done."
- o Former Senator Thomas Eagleton (D-MO) has noted: "You're not getting that money out of the Red Cross or the Little Sisters of the Poor. This is not an exercise in philanthropy. They're interested in tangible, legislative results. It's gotten to an obnoxious and dangerous level, dangerous for democracy."

The growing number of PACs has enabled those which share the same legislative interest to align together to exert even greater influence in the legislative process. For example, more than one-third of all PACs active in the 1983-84 election cycle were aligned around the following special interests:

- o banking -- 295 PACs
- o labor -- 274 PACs
- o real estate and construction -- 128 PACs
- o agriculture -- 124 PACs
- o food -- 117 PACs
- o insurance -- 112 PACs
- o oil and gas -- 111 PACs

Obviously, through their aggregate contributions, these PACs are able to exert considerably more pressure, and are going to gain more access and influence in Congress. As Representative

David Obey (D-WI) has said, frequently in Washington "[a]n issue affects an entire industry and all of the companies and labor unions in that industry. When that occurs, when a large number of groups which have made substantial contributions to members are all lobbying on the same side of an issue, the pressure generated from those aggregate contributions is enormous and warps the process. It is as if they had made a single, extremely large contribution."

A Common Cause study of PAC contributions to Senate Finance Committee Members underscores Representative Obey's assertion. The 1986 study found that the 20 Members of the Committee received total campaign contributions of \$956,742 from energy-related PACs, \$969,213 from insurance PACs, \$1,153,857 from labor PACs and \$300,120 from law PACs for their campaigns. Contributions of this magnitude, far in excess of the individual PAC contribution limits, leads to disproportionate influence in the legislative process. And the effect of such influence, as Senator Proxmire (D-WI) has noted, may take an indirect and subtle form: "It may not come in a vote. It may come in a speech not delivered. The PAC payoff may come in a colleague not influenced. It may come in a calling off of a meeting that otherwise would result in advancing legislation. It may come in a minor change in one paragraph in a 240-page bill. It may come in a witness not invited to testify before a committee. It may come in hiring a key staff member for a committee who is sympathetic to the PAC. Or it may come in laying off or transferring a staff member who is unsympathetic to a PAC."

As mentioned above, PAC contributions also skew the electoral process by heavily favoring incumbents over challengers. Disproportionate PAC giving to Members of Congress over challengers exacerbates the built-in advantages of incumbency and undermines competition in congressional races.

Finally, the prominent role played by PACs in financing congressional campaigns has sharply undermined public confidence in the integrity of our electoral process and decision-making in Congress. Polling data from the last several years indicates that the public is extremely concerned about the role of PACs in congressional campaigns.

A Role Model: The Presidential System

In 1985, the Commission on National Elections, headed by former Secretary of Defense and Republican Congressman Melvin Laird, and former Chairman of the Democratic National Committee Robert Strauss, concluded: "Public financing of presidential elections has clearly proved its worth in opening up the process, reducing undue influence of individuals and groups, and virtually ending corruption in presidential election finance."

The presidential public financing system grew out of the worst political scandal in our nation's history. Watergate revealed that our government was literally up for sale. Enactment of a presidential public financing system in 1974 dramatically shifted the course of presidential campaign financing and put it on a path sharply divergent from that of congressional campaign financing.

Under the presidential public financing system, candidates who agree to abide by limits on overall campaign spending and the expenditure of personal wealth are able to receive public financing from funds designated to a separate account by individual taxpayers. Public funds are available to match small private contributions raised by candidates during the nominating process; for the general election, major-party candidates are entitled to full campaign funding with public dollars.

In the three elections since the system was adopted -- 1976, 1980 and 1984 -- presidential public financing has been highly successful. During this period 34 of the 35 major party candidates have chosen to participate in the system. Candidates have been able to run competitive races for the presidency without having to rely unduly on wealthy individual donors or special interest PACs. In the 1984 presidential election, for example, PACs accounted for \$1.3 million or less than 1.2 percent of the total funds raised. As The New York Times has observed, "Public financing confers on presidential candidates the freedom not to grovel."

The presidential public financing system also has served to check the amounts spent on presidential elections. In 1972, without any system of spending limits and public financing, President Nixon spent \$62 million during his primary and general election campaign. To put this in perspective, if President Nixon's expenditures were adjusted for the increases in the Consumer Price Index between 1972 and 1984, the expenditures by President Nixon rise to \$153.9 million in 1984 dollars. This

compares with the \$68 million President Reagan spent for his primary and general election campaign in 1984 under the presidential public financing system.

The Presidential Election Campaign Fund, financed by the voluntary dollar tax checkoff on federal income tax returns, has contained more than enough funds to finance every presidential election since its establishment. As of December 31, 1986 the Fund contained \$161 million. The annual income for the fund is approximately \$35 million; by the 1988 election, then, the Fund should contain \$231 million. The FEC estimates that disbursements in 1987 and 1988 for presidential election campaigns will total \$171.5 million. Based on these estimates, the Fund will contain a healthy surplus of \$59.5 million following the 1988 presidential election.

The system of presidential public financing has demonstrated that a system of spending limits and public financing is far from the "incumbents' protection act," that its opponents have claimed. The first two presidents to run under that system -- Presidents Ford and Carter -- became the first two incumbent Presidents to lose a presidential election since President Hoover was defeated in 1932. In two of the three elections held under the presidential public financing system, sitting Presidents of the United States were defeated.

One of the most important benefits of the presidential system -- and an indication of its merit -- has been its positive impact on public perceptions and confidence in the institutional integrity of the presidency. The Carter and Reagan presidencies

have been relatively free of any hint that government decisions have been traded for or influenced by campaign contributions -- unlike the Nixon presidency.

In short, over the last decade, the fundamental goals of the presidential system -- to restrict the use of campaign contributions to obtain influence and to allow for competitive campaigns in a system where overall spending is controlled -- have been accomplished. While the presidential public financing system is fundamentally sound and of demonstrated effectiveness, a series of adjustments are needed to address new problems that have arisen since the system was first created twelve years ago -- for example, the use of delegate selection committees and "soft money" to evade the law's contribution and spending limits. These problems, which are discussed in more detail later in our testimony, can and should be remedied by legislating changes in the statute.

Time for Action

The presidential system provides solid evidence that major reforms in congressional campaign financing, including a system of public financing and spending limits, can work and work well. With such a model for guidance, Congress can move forward with confidence to clean up the out-of-control system of financing congressional campaigns.

The 1986 congressional election was an election of excess: excessive campaign spending, excessive reliance on special interest campaign contributions, excessive TV advertising and

excessive negative campaigning. That election demonstrated conclusively that the time is past due for a comprehensive overhaul of our congressional campaign finance laws. There is an urgent need to call a halt to spiralling campaign spending and to bring the influence of PACs in the electoral process and in Congress under control. Public confidence in the integrity of our electoral and public processes must be restored.

The 99th Congress represented a critical turning point in the battle to limit the influence of PACs and set the stage for efforts to enact comprehensive campaign finance reform legislation in this Congress. Last August, the Senate voted 69-30 in favor of an amendment sponsored by Senators Boren (D-OK) and Goldwater (R-AZ) to limit the total amount of PAC funds a congressional candidate could accept. That vote was the catalyst for energizing broad-based public support, as well as a national coalition of organizations, and sparking an outpouring of over 400 editorials in favor of campaign finance reform.

In the 100th Congress, a new bill to fundamentally reform the campaign finance system has been introduced by Senators Boren (D-OK) and Byrd (D-WV). S. 2, The Senatorial Election Campaign Act, incorporates the most essential elements of last year's Boren-Goldwater bill and also includes provisions to establish a system of spending limits and public financing for Senate campaigns.

The broad cosponsorship of S. 2, including a number of Senators who in the past have opposed public financing, signals a growing consensus for major campaign finance reform. As Senator John Stennis (D-MS), the President Pro Tempore of the Senate and

a cosponsor of the Boren-Byrd bill, has said, "When the present law was passed, I was strongly opposed to the idea of paying any of the campaign costs for candidates for U.S. Senate from the public treasury, or the House of Representatives, either one. But in view of what has happened now, I have changed my mind."

Recently, a bipartisan group of more than 80 Washington lobbyists and lawyers released a statement announcing the formation of "Lobbyists and Lawyers for Campaign Finance Reform." In a letter to all Members of Congress, the group said "our current system is fundamentally flawed. It diverts scarce time from the issues; it elevates money above merits; it promotes cynicism in the electorate. This is not good for you or your staff. It is not good for us or the clients we represent. Most importantly, it is not good for our democracy."

Spending Limits and Public Financing System under S. 2

1. Major Provisions. In 1976, the Supreme Court ruled in Buckley v. Valeo that campaign spending and the use of a candidate's own money in a campaign can be limited only in a voluntary system of public financing -- like the presidential public financing system upheld by the Court. This is the approach proposed in the Boren-Byrd bill.

Under the Boren-Byrd proposal, qualified Senate candidates could receive public funds for the general election after agreeing to abide by limits on overall campaign spending of \$600,000 plus 25 cents multiplied by the voting age population in each candidate's state. A participating candidate and his or her

immediate family would also be barred from providing more than \$20,000 in personal funds for the candidate's general election campaign.

To qualify, a candidate would have to demonstrate the strength of his or her candidacy by raising \$250,000 or 20 percent of that state's spending limit, whichever is less, in contributions of \$250 or less from individuals. At least 80 percent of those contributions would have to come from individuals living in that candidate's own state. After meeting this threshold, a major party Senate candidate would be entitled to a federal grant equaling the difference between the spending limit for that candidate's state and the amount the candidate raised to meet eligibility requirements. Under the legislation, candidates who choose not to participate in the system would be left in the same position as if the system did not exist: they would be free to raise money from private sources without any expenditure limits.

The bill also contains a provision designed to assure that a candidate who participates in the system is not thereby placed at a significant disadvantage. This provision would allow a participating candidate who faces a non-participating opponent in certain circumstances to receive additional public funds, and to have his spending limit withdrawn, if the opponent spends in excess of the limit.

It is critical that spending limits established as part of a public financing system be set high enough for a serious challenger to run a competitive campaign. Although a challenger doesn't always have to spend more than an incumbent to win, it is important that a challenger be able to spend sufficient funds to make a case and be competitive. The system proposed in S. 2 meets this standard.

The system established by the Boren-Byrd bill is based on a system of public grants once a threshold of individual contributions is raised. We believe that the use of grants to help fund Senate campaigns is preferable to a matching system because, given the costs and the extremely demanding nature of Senate campaigns, a system of grants is far more effective in reducing the need for candidates to devote large chunks of time and energy to raising money. At the same time, the system requires candidates to demonstrate significant broad-based support so that individual contributions maintain a significant role in financing campaigns and to ensure that only serious candidates receive public funds.

2. Minor Party and Independent Party Candidates. Minor party and independent candidates would be eligible to participate in the system of public financing and spending limits when -- like major party candidates -- they have demonstrated support by raising a threshold amount from small, individual contributions. Eligible minor party and independent candidates would receive matching funds of up to \$250 for each individual contribution. In Buckley v. Valeo, the Supreme Court recognized that minor parties and independents are differently situated from major party

candidates and are appropriately not treated identically. According to the Court, there are strong governmental interests against use of public money to foster frivolous candidates, create a system of splintered parties, and encourage unrestrained factionalism.

3. Independent Expenditures. Candidates who participate in the system and who face substantial independent expenditures in their elections would also receive additional public funds in order to be able to respond to the independent expenditures. If any individual or group makes independent expenditures of more than \$25,000 in opposition to a participating candidate or in support of the participating candidate's opponent, the participating candidate would be eligible for additional public funds equal to the amount being spent by the individual or group on independent expenditures, over and above \$25,000.

Because of their unlimited, unaccountable nature, independent expenditures by individuals and groups pose a unique and serious problem to an open, competitive electoral process. As Senator Ernest Hollings (D-SC) has noted, "We all have seen how PACs can seriously damage the balance in a campaign through the expenditure of enormous amounts of money. In effect, a candidate budgets to fight one well-financed opponent but then ends up fighting many."

The independent expenditure provision in the Boren-Byrd bill would help to ensure that candidates who participate in the public financing system and are the targets of substantial independent spending are able to respond. The provision would not limit the speech of, or otherwise impose burdens on, the individuals or groups making independent expenditures. Further, providing

assistance to participating candidates to reply to independent expenditures would serve important First Amendment values by encouraging public debate on matters of public interest and thereby increasing the amount of information available to the electorate.

4. The Public Interest Benefit. A system of public financing and spending limits for congressional campaigns would, like the presidential system on which it is modeled, serve to check the rapid growth in congressional campaign expenditures. An electoral process in which huge campaign chests are no longer pivotal to launching a competitive campaign bid would serve the public interest in several critically important ways. In so doing, it would help to restore public confidence in our electoral and political processes.

First, under the system proposed in S. 2, candidates would be less consumed with raising funds and would have greater opportunities to communicate with the voters and address the important issues in a campaign.

A system of public financing and spending limits would also encourage competition in congressional campaigns. Individuals who, under the current system, choose not to challenge a congressional incumbent because they are unwilling or unable to raise funds for extremely expensive campaigns could qualify for partial public financing under the system established by S. 2. At the same time, the system's requirement that a candidate raise a threshold level of funds from small, private, in-state contributions to qualify for public financing serves to retain a significant role for private contributions in congressional

campaigns and to ensure that candidates do not receive public funds unless they can demonstrate significant broad-based support in their home state.

The cost of the public financing system proposed in S. 2 is expected to be approximately \$100 million over a two-year election cycle. In comparison, President Reagan, the greatest recipient of funds under the presidential public financing system, voluntarily accepted more than \$90 million from the Presidential Election Campaign Fund for his presidential campaigns in 1976, 1980 and 1984.

Some opponents of congressional campaign finance reform argue that the American public opposes public financing of congressional campaigns. As evidence of public opposition, these opponents cite a series of polls conducted by Civic Service, Inc. (CSI) and sponsored by the American Medical Association (AMA).

The results of surveys conducted by The Gallup Poll, however, dramatically contradict the findings of the AMA/CSI polls. For example, the most recent Gallup poll of July, 1984, found that a majority of the American public supports the idea of the federal government providing funding for congressional campaigns and prohibiting contributions from all other sources. Of those polled, 52 percent supported and 36 percent opposed this proposal. This data sharply conflicts with the findings of the AMA/CSI poll of the same year which found that Americans disapprove of public financing of congressional campaigns by a 64.8 percent to 23.6 percent majority.

Common Cause believes that the investment of public funds in congressional campaigns will produce important results that make

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the system clearly worth its cost. These include restored public confidence in our electoral and congressional decision-making processes, Members of Congress who are less distracted by fundraising needs and more competitive campaigns. And there is no way to compare the cost to taxpayers of a public financing system with the cost of the present system in which money is given to buy influence and affect policy outcomes which cost the taxpayers money in hidden ways. As Senator Tom Harkin (D-IA) has said, "Public financing might save the treasury and the American people many, many times more than its actual cost through reductions in favorable treatment which the contributors might receive through special interest legislation." The cost of the system of public financing and spending limits proposed in S. 2 -- approximately \$100 million over a two-year election cycle -- constitutes the best investment our country can make in the health and integrity of our electoral and political processes.

Limits on Aggregate PAC Receipts

S. 2 would limit total PAC receipts for all congressional candidates whether or not they chose to participate in the public financing system. A House candidate could accept no more than \$100,000 from PACs; limits for Senate candidates would be \$175,000 to \$750,000, depending on the population size of the candidate's state. S. 2 also would lower the amount a PAC can contribute to any one candidate from \$5,000 to \$3,000.

The aggregate PAC limit provision in S. 2 is a vitally important component of the bill because, even with the enactment of a public financing system, a significant role for private

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contributions would be retained. During primary election campaigns, and during the entire campaign season of a candidate who chooses not to participate in the public financing system, private contributions would constitute the funding source for candidates. In all likelihood, these private contributions would include a significant portion of PAC funds; the need for reasonable aggregate limits on PAC receipts, therefore, remains.

The aggregate PAC limit established in S. 2 would reduce the risk of undue influence in the congressional decision-making process that can arise from private financing of congressional campaigns. Although individual PAC contributions to congressional campaigns are currently limited, the danger of undue influence still exists; for example, PACs sharing common interests can and do make aggregate contributions that total many times the amount that each PAC could contribute individually. By diminishing the role of PAC contributions in congressional races -- and the access and influence which such contributions often seek -- the integrity of the congressional decision-making process is advanced.

Aggregate PAC limits would also restore the integrity and effectiveness of existing limits on individual PAC contributions. As discussed above, the existing limits, which were imposed to prevent a single interest from exerting undue influence on a candidate or Member of Congress, are undermined by massive special interest giving by PACs with similar interests. Furthermore, limiting the role of PACs in financing congressional campaigns

would be a step towards restoring public confidence in the electoral and decision-making processes in Congress.

Other Provisions

1. Bundling. The Boren-Byrd legislation includes a number of other provisions that would address serious problems in current campaign finance law. For example, the bill addresses the increasingly common use of the bundling practice, under which PACs and other political committees are gathering contributions made out to a particular candidate instead of to the PAC or political committee and then turning over these checks or otherwise channeling them to the candidate without counting the contributions against the PAC's or political committee's limits. This practice allows PACs and political committees effectively to evade existing contribution limits.

More and more PACs are taking advantage of the bundling loophole. For example, in 1985 one insurance PAC contributed \$1,000 in its own name to a Member of Congress; in addition, it provided the Member with \$215,000 in bundled contributions that did not count against the PAC's contribution limits. Defense-related PACs as well as an arms control group have taken advantage of the bundling loopholes to deliver -- and get political credit for -- contributions far in excess of their individual contribution limits.

The successful use of the bundling loophole by PACs and other political committees has led to increasingly blatant evasion of the legal contribution limits. For example, in the last elections the National Republican Senatorial Committee (NRSC) circumvented

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the \$17,500 per Senate candidate legal limit on NRSC contributions by claiming that the monies it received from donors were "earmarked" to specific candidates. The NRSC made this claim even in cases where the donors' checks were made out to the NRSC and not the specific candidate, and even though individual donors, in later interviews, in fact denied having earmarked their checks. A month before the November elections, the NRSC had provided a total of more than \$4 million to 1986 Senate candidates in "earmarked" contributions.

In October, 1986, Common Cause filed a complaint with the FEC charging that these earmarking practices by the NRSC constitute blatant and massive violations of the contribution limits contained in the Federal Election Campaign Act (FECA). The complaint urged the FEC to thoroughly investigate the NRSC "earmarking" practices and to find that the NRSC violated the FECA by making contributions to Senatorial candidates in excess of its contributions limits. (We request that a copy of our August, 1986, comments on FEC proposed rule-making regarding bundling, as well as the Common Cause complaint filed with the FEC in October, 1986, be included in the formal record of this hearing.)

S. 2 would close the bundling loophole by requiring that contributions bundled or otherwise arranged or delivered by a PAC or other intermediary would count toward the intermediary's contribution limit, as well as the original contributor's limit. This provision is absolutely essential to restoring the effectiveness of the existing contribution limits.

2. Independent Expenditures. The Boren-Byrd bill also addresses the problem posed by unaccountable and unlimited

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independent expenditures, and the negative advertising that such expenditures frequently fund, by tightening the definition of independent expenditures to ensure that such expenditures are, in fact, made independently of a candidate. As well, as outlined above, the bill would provide additional public funds to candidates who participate in the congressional public financing system to enable them to respond to substantial independent expenditures.

Other Campaign Finance Issues

1. "Soft Money." The Boren-Byrd legislation does not, as currently drafted, address another very serious loophole in our campaign finance laws -- the soft money loophole. Soft money is being used to inject large sums of otherwise illegal campaign funds into federal elections. Soft money funds are received by political party organizations and other political committees from sources that would be barred from making those contributions in connection with a federal election. These sources include corporations and labor unions, and individuals and political committees who contribute amounts above the contribution limits imposed by federal laws.

Because the sources of soft money funds are not systematically disclosed in all states, and neither their receipt nor their expenditure reported to the FEC, the extent and use of these funds is often a well-kept secret. The use of soft money seriously undermines individual and political committee contribution limits, the limits on political party activity and the ban on corporate and union contributions.

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Soft money practices constitute the most serious problem facing the nation's presidential campaign finance system today. In 1984, Common Cause proposed to the FEC that new regulations be adopted to control the use of the soft money subterfuge. Under these regulations, national-level political party committees, including party congressional campaign committees and federal officials, would be prohibited from establishing "soft money" accounts or from otherwise channeling to state parties for use in federal campaigns contributions that would be illegal under federal law. We have also spelled out our approach in detail in formal submissions to the FEC in 1985 and in testimony before the FEC in 1986. (We request that a copy of Common Cause's February, 1985, FEC submission on soft money, and our January, 1986, testimony before the FEC be included in the formal record of this hearing.)

In our view, soft money practices are in direct violation of existing federal statutes. We believe that the FEC has both the authority and the institutional responsibility to deal with this threat. Common Cause has repeatedly pressured the FEC to adopt measures to address the soft money problem. It is imperative that Congress address this problem. We urge the Rules Committee to incorporate legislation that deals with this problem in the Boren-Byrd legislation.

2. The Federal Election Commission (FEC). In general, the FEC has effectively administered the distribution of public funds under the presidential public financing system, and we believe that it can similarly administer the system established by S. 2.

In other campaign finance areas, however, the FEC has failed to meet its basic responsibilities to see that the law is obeyed and has failed to act aggressively to curb new abuses in the campaign finance system. As an October, 1986, article in The Washington Post noted, "In a political system strongly influenced by money, a series of recent decisions by the Federal Election Commission has given campaigns wide latitude to raise and spend money in ways that reformers contend violate the spirit and letter of the law ... politicians on both sides of the aisle take the view that the FEC represents little threat to 'innovative' uses of money and fund-raising committees."

Among the most damaging of the FEC's recent actions are its refusal to investigate and restrict the use of soft money and its decision to permit political committees to "bundle" earmarked contributions from individuals to candidates, without those funds being counted against the contribution limits for the political committees. These rulings, along with others, constitute a serious threat to the integrity of the current campaign finance laws.

The FEC is also ponderously slow in its enforcement proceedings and is often prone to concentrate on technicalities rather than major issues of rule making. While the FEC's efforts at promoting disclosure of the receipts and expenditures of PACs and candidates have been a major success, lax enforcement by the Commission threatens to undermine the effectiveness of the prohibitions, restrictions, and limits of the federal election law.

Both external and internal organizational factors act to undermine the effectiveness of the FEC. Congress created the Commission with a partisan split and has never clarified the roles of the staff director and general counsel, the two statutory officers of the Commission. Consequently, the FEC has failed to have management and policy direction. Congress also consistently underfunds the agency, making it more difficult for the Commission to carry out its various responsibilities.

The performance of the FEC is critical to the effective implementation of federal election laws. Congress needs to consider changes in both the structure and the administration of the Commission to ensure the proper implementation of federal election laws.

3. Delegate Committee Spending. While presidential candidates who receive federal matching funds do so in return for a commitment to limit their overall and state-by-state spending, individuals who are seeking selection as delegates to a party's nominating convention are presently not subject to these limitations. Expenditures by these delegate committees create the capacity to evade these spending limits, particularly if the expenditures are made at the direction of, with the encouragement of, or in conjunction with a candidate's campaign.

Similarly, delegate committees create the capacity for individuals and PACs to evade the \$1,000 and \$5,000 limits to a presidential candidate, respectively, by making multiple contributions to numerous delegate committees -- all of which are directly intended to benefit that candidate's campaign. Such

contributions serve to undermine the effectiveness of the existing contribution limits.

The 1984 controversy surrounding the use of delegate committees by the campaign of former Vice President Walter Mondale underscores the need for a legislative clarification of the role of these committees in presidential campaigns. Federal election law needs to be clarified to apply the limitations on contributions and expenditures to convention delegates.

4. Public Financing Levels under the Presidential Primary Finance System. In recent years, competitive presidential primary candidates have emerged from the previous election with significant campaign debts, despite the availability of public financing for primary elections. This experience raises important questions regarding the adequacy of current levels of public financing made available in the presidential primary process. In our view, the most appropriate remedy would be to provide for access to additional public funds during the primary. Common Cause urges the Committee to take a hard look at ways of injecting additional public funds into the presidential primary system.

5. Candidate and Officeholder PACs. A growing number of presidential candidates and Members of Congress are establishing their own PACs. These PACs, like many others, may make campaign contributions; in many cases, particularly in the case of presidential hopefuls, these PACs are also used to finance a candidate's political travel and related expenses -- expenditures which at this point under FEC interpretations do not count against the spending ceilings of the presidential public financing system. These PACs also allow larger individual and PAC contributions to

be made to the candidate or officeholder involved than could be made to their candidate campaign committee. They also can place officeholders and office-seekers in the position of using PAC money to curry favor.

Vice President George Bush's PAC, called the Fund for America's Future ("the Fund"), is a case in point. The Fund asked the FEC whether its expenditures in last August's Michigan primary, including recruitment and financial assistance to candidates for precinct delegates, must be treated as presidential campaigning. The FEC overturned its general counsel's recommendation and ruled that the Fund's precinct delegate activities in Michigan are not presidential campaigning and therefore do not require allocation of expenses to any candidate for federal office and do not trigger any such candidacy.

The FEC's decision ignores the seriousness of allowing a loophole in the law which in effect fosters the use of multi-candidate PACs instead of formal presidential campaign committees to finance activities. The Fund's Michigan precinct delegate activity, for example, is not subject to a PAC limit because of the FEC's decision. The Commission's ruling does a serious disservice to the campaign finance laws.

Legislation should be enacted to prohibit the creation, control or maintenance of PACs by the President, Vice President, and Members of Congress and by prospective candidates for President, Vice President, or Congress.

6. Presidential Candidate Foundations. An increasing number of prospective presidential candidates have set up tax-exempt foundations. Unlike campaign committees, these foundations may

accept unlimited amounts of money, including contributions from corporations and unions, and they are not required to report the source of their funds. Donations to these foundations furthermore are fully tax-deductible.

These foundations, established to do research on issues and to undertake other educational activities, in theory are not linked to any individual. In practice, however, they can pay and have paid for travel by presidential hopefuls and have provided information which forms the basis of campaign position papers -- activities which help promote the public officials who created them. At a minimum, tax-exempt foundations which are controlled by or maintained for a political candidate should be required to disclose the source and amount of contributions received, and the purpose and amount of expenditures made.

7. "Grandfather Clause." In 1979, Congress amended federal law to prohibit candidates from converting surplus campaign funds for personal use. Under a "grandfather" clause included in that amendment, however, any Member of Congress who was in office on January 8, 1980, is permitted to keep his or her surplus campaign contributions for personal use after leaving Congress. The Senate has adopted rules that prohibit all Senators from converting funds for their personal use.

Under the "grandfather" clause, Members of Congress in office before 1980 may use surplus campaign money upon their retirement from Congress for their personal enrichment. Surplus funds are also valuable to Members for potential use in future elections and discourage potential challengers from running for office.

At the end of the 1986 election campaign, House candidates had \$49 million in surplus funds, more than triple the \$15 million held by House candidates following the 1980 election. Almost all of these surplus funds were held by incumbents. Fifty-four House candidates, all incumbent winners, reported year-end 1986 surplus funds of \$250,000 or more. Of the 54 Representatives, all but seven are covered by the "grandfather" clause.

The substantial increase in surplus funds being held by House Members reflects the fact that incumbent Members are raising substantial amounts which have not been necessary for their campaigns and which are being stockpiled. And PACs are playing a key role in supplying those funds, particularly in the case of safe-seat incumbents.

Congress, which already has recognized the problems inherent in allowing retiring Members to convert contributions into personal funds by banning this activity for many Members, should complete the task started in 1979 and remove the grandfather clause which allows some Members to escape coverage of this provision.

Conclusion

In this historic year which marks the bicentennial of the Constitution, there is no more important step that Congress can take to restore public confidence in the integrity of the electoral process and Congress itself than to act decisively and swiftly to clean up the system of financing congressional campaigns.

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The most serious problems in the current system -- the prominent role of special interest money in financing campaigns and the enormous cost of running for a seat in Congress -- threaten to pervade and distort the processes fundamental to our democracy. At stake are the openness, competitiveness, and fairness of the process by which American citizens elect their representatives in Congress and, ultimately, the integrity of the decision-making process in Congress and of Congress itself.

These critically important problems demand an immediate and full-scale response. The danger they pose to our democracy is of a non-partisan, non-ideological character, and their resolution requires concerted and quick action. Common Cause urges this Committee to advance the health, vitality and integrity of the electoral and political processes by reporting out S. 2 and providing the full Senate with the historic opportunity to reform our congressional campaign finance laws.

Senator DeCONCINI. Thank you.

Mr. Wertheimer, let me ask you this: What is Common Cause's position on political action committees? Do you oppose them?

Mr. WERTHEIMER. We oppose the role they play in this system.

Senator DeCONCINI. No, do you oppose—

Mr. WERTHEIMER. We have never supported the abolishment of political action committees.

Senator DeCONCINI. Do you feel that they can play a constructive role in education as well as fund raising?

Mr. WERTHEIMER. We believe that the issue always involved is the way in which money can be used to influence the political process and the role that PACs are playing is a very dangerous, destructive role. So in the abstract sense, as I say, we have never supported abolishment of PACs, but we—

Senator DeCONCINI. Do you feel that political action committees play a constructive role in educating their members and other—

Mr. WERTHEIMER. I cannot answer that very easily in the abstract, because you must look at the basic way in which the political—

Senator DeCONCINI. Do you know of any that do that?

Mr. WERTHEIMER. Well, I am sure that PACs may well play a role in informing people, in doing various things. I cannot speak to that question in terms of specifics. If each PAC in America were limited to giving no more than \$50 to a candidate and we did not have hundreds of PACs in one particular area, we would have a very different system.

Senator DeCONCINI. Could I suggest that Common Cause take an objective look at some of the positive things PACs do. I am concerned about the over-influence of their contributions and their tremendous growth, but I would hope that Common Cause would look at the positive side as well and be objective as to what some political action committees do in terms of educating their voters and things that they do in behalf of those that voluntarily sign up.

Mr. WERTHEIMER. We are prepared to take a positive look. It is very hard to do today, Senator, and hopefully after this legislation reaches law we will take another new look.

Senator DeCONCINI. Fine. Thank you very much.

The next witness is Mr. William Moore, President, National Association of Realtors.

We have three more witnesses and I am going to have to limit each witness here to 12 to 15 minutes due to the time, having to leave at 11:30 myself. So if you will, your full statement will appear in the record, if you would summarize it for us.

Mr. Moore?

TESTIMONY OF WILLIAM M. MOORE, PRESIDENT, NATIONAL ASSOCIATION OF REALTORS, ACCOMPANIED BY GARY SOUTH, STAFF MEMBER, WASHINGTON, DC

Mr. MOORE. Thank you, Senator DeConcini.

My name is Bill Moore and, as you said, I am President of the National Association of Realtors, and on behalf of our 775,000 members we want to thank you and the members of your Committee for the opportunity to present our views this morning.

You have our written testimony and——

Senator DECONCINI. Would you introduce your colleague?

Mr. MOORE. Yes. I would like to introduce the expertise on our staff, Mr. Gary South, from Washington, DC.

In summary, Senator, let me say that the National Association of Realtors proposes Federal financing of congressional campaigns as a violation of the spirit and principles of open and free elections.

For example, once campaign purse strings are controlled by the Federal Government, the same incumbents who now enjoy all the advantages of incumbency in running for reelection will also control the formulas for how much money a challenger gets and how and when he can spend it.

In addition, administering public financing of congressional elections would be a never-ending nightmare and a bureaucrat's dream. We already have experience with bureaucratic public financing. The 1976 Carter and Ford presidential campaigns were the first ever to be financed with taxpayer dollars. Both were audited by the Federal Election Commission.

The Ford audit took until March of 1978, nearly a year and a half after the election was over. The audit of the Carter spending was released on July 10, 1980, right in the middle of the next presidential campaign. In both cases, huge amounts of money and manpower were spent discovering such violations as \$92 the Ford Committee spent paying parking tickets and admonishing the Carter Committee on using first class air travel.

Our concern is imagining this paperwork monstrosity multiplied by more than 1,400 candidates for the House and the Senate. In our opinion, no supporter has yet convincingly addressed the inevitable twin problems of bureaucracy and paperwork that would accompany public financing.

We are also concerned about cost, cost to the Treasury and the effect on the Federal budget deficit problem we have. Now, having said this, it is nonetheless apparent to us that there exists among the American public a measurable sense of unease about PACs. It is our belief that the growing level of this public concern calls for a self-examination and reevaluation of PACs, as to how we do business and how we allow candidates to do business with us.

We firmly believe that we do not need to develop a new system but we need to improve on the one we have got. To help restore the competitiveness of congressional elections and to help distance the legislative process from the campaign fund raising process, the National Association of Realtors proposes seven suggestions to be taken up by Congress:

One, increase limits on individual contributions: To help reduce the percentage of congressional campaign spending funded by PACs, we propose that individual contribution limits be raised to \$1,500 or \$2,000 per candidate per election. Raising the individual limits, while retaining or reducing the limits on PAC contributions inevitably will result in a diminishing percentage of PAC contributions in the typical candidate's campaign funding and an increased share of individual contributions.

Two, curtail length of the campaign fund raising process: We believe that a "fire break" is needed in the campaign fund raising process, and that at least some part of each session of Congress

should be free from the hassles and distractions of fund raising. NAR therefore proposes that incumbents in both the House and the Senate be prohibited from conducting any campaign fund raising at all during the first six months of every non-election year. We propose that fund raising by incumbent Senators be limited to the second three years of his or her term.

Three, we propose to reduce incumbents' advantages with PACs: To help lessen the pro-incumbent bias of PAC giving, we propose that the current level of \$5,000 for congressional candidates be retained for challengers and open seat candidates, but that a \$3,000 per election limit be placed on PAC contributions to incumbents.

This proposal, if adopted, would not in and of itself produce greater parity in the PAC funding of incumbents and challengers. But the higher individual PAC contribution limits for challengers can help compensate for an incumbent's greater ability to solicit effectively a larger number of PACs due solely to his or her incumbent status.

Four, curtail Washington fund raisers: To reduce the desirability of such events, we propose that no person registered as a congressional lobbyist be allowed to (1) serve on the steering committee of such a reception, (2) attend any such reception, or (3) pass any contribution to an incumbent Member of Congress, either in person or through the mail.

We would even go so far as to say that it ought to be against the law even to solicit PACs for these events. Without PAC participation, few of them would be held.

Five, ban "leadership" PACs: In order to stop the proliferation of this double "PAC-sation," we propose that leadership PACs not be allowed, and that each candidate for the House and Senate be limited to a single authorized campaign committee.

Further, NAR proposes that such principal campaign committees be limited to making expenditures relating only to the office for which the candidate has declared. This would eliminate so-called "committee transfers," whereby one Federal campaign committee can legally transfer funds to another candidate's committee.

Six, we propose a limit on post-election contributions by PACs: To help eliminate this situation, NAR proposes that no PAC that has contributed to the losing candidate in a House or Senate campaign be allowed to make a post-election contribution to the winning candidate for the purpose of debt retirement for the election cycle just ended.

Seven, we propose to eliminate carryover campaign war chests: To help thwart the anti-competitive result when large campaign funds are carried over from one election to another by incumbent members of Congress, NAR proposes that candidates for the House and Senate be required to zero out their campaign treasury at the end of each election cycle. At the candidate's option, such monies could be disposed of in one of two ways: (1) Rebated back to contributors on a pro rata or per capita basis; or (2) Turned over to the official party campaign committee for the House for which the candidate ran, thereby preserving unexpended campaign funds for use in the campaign process, but removing control of those funds from the candidate that raised them.

In conclusion, let me say that these proposals likely will not draw widespread approval from many of our sister PACs. To be sure, their adoption would affect, even limit the way all PACs operate. This would include the realtors' political action committee. Neither are they designed to curry favor with Members of Congress, since they would also impose self limitations on the way incumbents in particular solicit and raise campaign funds from the PACs.

We believe, however, that they represent a plausible starting point for building greater public confidence in the campaign finance process. They would help bring back some measure of competitiveness in congressional elections. They would also maintain the perfectly legitimate role both of PACs and of voluntary, individual contributors in the financing of congressional campaigns.

We urge your consideration and passage of these suggestions, Mr. Chairman.

Thank you.

[The prepared statement of Mr. Moore follows:]

STATEMENT OF WILLIAM M. MOORE, NATIONAL ASSOCIATION OF REALTORS

Mr. Chairman, my name is William M. Moore. I am a REALTOR® from Denver, Colorado and 1987 President of the NATIONAL ASSOCIATION OF REALTORS®. On behalf of the more than 775,000 members of our Association, I want to thank you and the members of your Committee for the opportunity to present our views on campaign financing reform.

As sponsor of the nation's largest political action committee, the NATIONAL ASSOCIATION OF REALTORS® views with interest the growing crescendo of anti-PAC rhetoric and its attendant campaign finance "reform" proposals. Our position as a leader in the PAC community compels us to speak out on this issue and address some of the legitimate concerns being expressed.

Legislation currently being considered by this Committee (in particular S.2) proposes, among other things, a system of "public" (i.e., federal government) financing of at least U.S. Senate campaigns. One of the avowed purposes of this proposal is to reduce the participation of PACs in the campaign process.

Wholly aside from its anti-PAC nature, the NATIONAL ASSOCIATION OF REALTORS® opposes federal financing of Congressional campaigns as a violation of the spirit and principles of open and free elections. Turning the funding of Congressional elections over to the federal government is like the proverbial fox guarding the chicken coop.

For example, once campaign purse strings are controlled by the federal government, the same incumbents who now enjoy all the advantages of incumbency in running for reelection will also control the formulas for how much money a challenger gets--and how and when he can spend it.

Also, with the attendant "cap" on total spending that would accompany taxpayer financing, many challengers would be hard pressed to build the necessary name recognition to compete effectively against an entrenched incumbent. A \$5 million spending limit in U.S. Senate races in California, for example, may seem like a lot of money. But it probably takes at least two or three times that much for even a decent challenger to become known in that mega-state.

In addition, administering public financing of Congressional elections would be a never-ending nightmare--and a bureaucrat's dream. We already have experience with bureaucrats handling public financing. The 1976 Carter and Ford presidential campaigns were the first ever to be financed with taxpayer's dollars. Both were audited by the Federal Election Commission.

The Ford audit took until March of 1981--nearly a year and a half after the election was over. The audit of the Carter spending was released on July 10, 1980--right in the middle of the next presidential campaign. In both cases, huge amounts of money and manpower were spent discovering such "violations" as \$92 the Ford committee spent paying parking tickets, and admonishing the Carter committee on using first-class air travel.

Imagine this paperwork monstrosity multiplied by more than 1,400 candidates for the House and Senate! In our opinion, no supporter has yet convincingly addressed the inevitable twin problems of bureaucracy and paperwork that would accompany public financing.

On this subject, therefore, we would cite James Madison's description of other proposals to "cure" the effects of democracy in action: "It could never be more truly said than of the . . . remedy, that it is worse than the disease."

Having said this, however, it is nonetheless apparent that there exists among the American public a measurable sense of unease about PACs. It is our belief that the growing level of this public concern calls for a self-examination and re-evaluation by PACs as to how we do business--and how we allow candidates to do business with us.

Chief among the public concerns are that PACs 1) contribute to the growing lack of competitiveness in Congressional elections by giving overwhelmingly to incumbents, and 2) through their contributions exercise undue influence over the legislative--as well as the campaign--process.

On the first count, it is difficult to dispute that our current system of Congressional elections does serve to thwart truly competitive races for Congress. For example, in 1986, an overwhelming 98 percent of all incumbent Congressmen running for reelection won--the highest number ever. In Senate races, fully 75 percent of the incumbents won.

One reason for this success rate is the huge war chests amassed by many incumbents. Many of these funds are carried over from election to election, for no reason other than to ward off future viable challengers. Another reason for the success rate is the millions of dollars in taxpayer-financed perks available to incumbents: free mailings, professional press operations, free travel to and within their states, etc.

Truth to tell, however, political action committees (PACs) also share the blame. It is hard to argue with the notion that PACs themselves have become an "incumbents' protection program." Though our own REALTORS® Political Action Committee has historically been fairer to challengers, PACs collectively give federal incumbents six times as much as they contribute to challengers. And the ratio has become more and more skewed in favor of incumbents over the past three election cycles.

The culpability of PACs in the pro-incumbent bias of our election process, therefore, must be addressed. Most current campaign "reform" proposals, including S. 2 currently being considered by the Senate, purport to address this problem by putting a cap on the aggregate amount of money any candidate--including an incumbent--could accept from PACs.

However, in practice this approach would be much less sacrificial for incumbents than it would first appear. Nearly any incumbent in either House or Senate would easily be able to raise their allowable PAC funds in a short period of time. But only the most viable challengers in a handful of races likely would be able to do so.

To help restore the competitiveness of Congressional elections, and to help distance the legislative process from the campaign fundraising process, the NATIONAL ASSOCIATION OF REALTORS® proposes that the Congress:

1. INCREASE LIMITS ON INDIVIDUAL CONTRIBUTIONS

It is noted that PAC contributions constitute an ever-increasing percentage of the typical candidate's campaign funding, thereby supposedly increasing the influence of PACs at the expense of individual givers.

The percentage of the total campaign spending of Congressional candidates derived from PAC contributions has been creeping up. But the changing ratios between individual contributions and PAC contributions are the inevitable result of the higher fixed contribution limits for PACs as opposed to that for individual givers.

To help reduce the percentage of Congressional campaign spending funded by PACs, we propose that individual contribution limits be raised to \$1,500 or \$2,000 per candidate per election. Raising the individual limits, while retaining or reducing the limits on PAC contributions, inevitably will result in a diminishing percentage of PAC contributions in the typical candidate's campaign funding and an increased share of individual contributions.

2. CURTAIN LENGTH OF THE CAMPAIGN FUNDRAISING PROCESS

It is argued by many--including a good number of members of Congress themselves--that the existence and proliferation of PACs has contributed to a virtually continuous campaign fundraising process, thereby distracting members from their legislative duties.

It is true that many incumbents these days raise money almost non-stop. However, it is hard to blame this phenomenon on the PACs. After all, PACs don't determine when a candidate begins his or her fundraising, or how long that process goes on.

We believe that a "fire break" is needed in the campaign fundraising process, and that at least some part of each session of Congress should be free from the hassles and distractions of fundraising. NAR therefore proposes that incumbents in both the House and Senate be prohibited from conducting any campaign fundraising at all (except for limited debt retirement) during the first six months of every non-election year. Further, we propose that fundraising by incumbent Senators be limited to the second three years of his or her term.

3. REDUCE INCUMBENTS' ADVANTAGES WITH PACS

It is argued that incumbent members of Congress, because of their "insider" status, have more access to the PACs than do challengers. Given the overwhelming advantage in PAC funding enjoyed by incumbents, this observation is demonstrably true.

To help lessen the pro-incumbent bias of PAC giving, we propose that the current limit of \$5,000 for congressional candidates be retained for challengers and open seat candidates, but that a \$3,000 per election limit be placed on PAC contributions to incumbents.

This proposal, if adopted, would not in and of itself produce greater parity in the PAC funding of incumbents and challengers. But the higher individual PAC contribution limits for challengers can help compensate for an incumbent's greater ability to solicit effectively a larger number of PACs due solely to his or her incumbent status.

4. CURTAIN WASHINGTON FUNDRAISERS

Many members of Congress complain about having to "crawl" to the PACs to raise money. Correspondingly, it is argued that the so-called "Washington fundraisers" held by incumbent members of Congress are little more than organized bribery sessions where, for the price of a PAC check, Washington-based lobbyists are able to importune legislators on pending legislation.

For anyone who has ever attended one of the myriad Washington "receptions," it is difficult to refute the allegation that these events are primarily attended by--and, indeed, are directed primarily at--members of the Washington lobbying corps (and particularly those who represent PACs). One sees precious few real, live constituents at these events, and seldom are there many other individual givers present.

Again, however, it is hard to lay the blame for this at the feet of the PACs. Many PAC representatives attend these interminable, hum-drum affairs with little sense of joy, and even many PAC defenders admit that the Washington fundraiser swirl has gotten out of hand.

To reduce the desirability of such events, we propose that no person registered as a Congressional lobbyist be allowed to 1) serve on the "steering committee" of such a reception, 2) attend any such reception, or 3) pass any contribution to an incumbent member of Congress, either in person or through the mail.

We would even go so far as to say that it ought to be against the law even to solicit PACs for these events. Without PAC participation, few of them would be held. What is more, most Washington representatives would prefer contacting Congressmen to inform them of the substantive good or evil in a particular piece of legislation, rather than meeting simply to participate in a fundraiser.

5. BAN "LEADERSHIP" PACS

It is argued that the so-called "leadership" PACs, formed and operated by members of Congressional leadership, are nothing more than legal slush funds which allow PACs to contribute double the legal maximum to powerful members of Congress.

There is more than just a ring of truth to the criticism of these PACs. It is hard to imagine that the framers of the original legislation that permitted the organization of PACs had in mind the creation of these personally-controlled operations.

First, they subvert the principal of full disclosure essentially by laundering money from other PACs and passing it on to candidates. Second, they also erode the argument that PACs are merely "many individuals banding together," because most leadership PACs solicit mainly other PACs, not individual givers.

In addition, the purpose to which such PACs often are put is less to help elect candidates to office in the first place than to play a role in elevating its sponsor to a leadership position in the House or Senate, or to help an already established leader maintain some form of influence over his charges. In our judgment, this is a questionable use of PAC funds.

The allegation that such PACs allow other PACs to double-give to members of the congressional leadership is also obviously true. While the PACs cannot be held blameless in this, it must nonetheless be pointed out that the very reason most of the leadership PACs are established in the first place is the desire by those members of Congress who have them to solicit the PACs twice--once for their principal campaign committee and again for their leadership PAC.

In order to stop the proliferation of this "double PACsation," NAR proposes that leadership PACs not be allowed, and that each candidate for the House and Senate be limited to a single authorized campaign committee.

Further, NAR proposes that such principal campaign committees be limited to making expenditures relating only to the office for which the candidate has declared. This would eliminate so-called "committee transfers," whereby one federal campaign committee can legally transfer funds to another candidate's committee.

6. LIMIT POST-ELECTION CONTRIBUTIONS BY PACS

It is argued by some that many post-election PAC contributions to winning House and Senate candidates -- particularly surprise winners--constitute little more than, as the Washington Post put it, "get-well gifts" designed to "buy forgiveness" for a PAC that supported the losing candidate during the election campaign itself.

To help eliminate this situation, NAR proposes that no PAC that has contributed to the losing candidate in a House or Senate campaign be allowed to make a post-election contribution to the winning candidate for the purpose of debt retirement for the election cycle just ended.

7. ELIMINATE CARRYOVER CAMPAIGN WARCHESTS

It is argued that another way PACs attempt to "buy" influence with incumbents is by making large contributions to members of Congress who are not in contested races or who face minimal opposition, thereby allowing those incumbents to amass huge warchests that carry over from one election to another.

It is undeniably true that many members of Congress raise far in excess of what is needed to mount an effective campaign in light of their opposition. While even unopposed incumbents ought to be able to raise enough funds to conduct a campaign on behalf of their own candidacy, the campaign kitties many members of Congress carry over from one election to the next are approaching the obscene. For example, more than 50 members of the House currently are carrying balances of \$250,000 or more in unspent funds from their 1986 campaigns.

To help thwart the anti-competitive result when large campaign funds are carried over from one election to another by incumbent members of Congress, NAR proposes that candidates for the House and Senate be required to "zero out" their campaign treasury at the end of each election cycle. At the candidate's option, such monies could be disposed of in either of two ways:

1. Rebated back to contributors on a pro rata or per capita basis; or
2. Turned over to the official party campaign committee for the house for which the candidate ran, thereby preserving unexpended campaign funds for use in the campaign process but removing control of those funds from the candidate that raised them.

These proposals likely will not draw widespread approval from many of our sister PACs. To be sure, their adoption would affect--even limit--the way all PACs operate. This would include the REALTORS® Political Action Committee.

Neither are they designed to curry favor with members of Congress, since they would also impose self-limitations on the way incumbents, in particular, solicit and raise campaign funds from the PACs.

We believe, however, that they represent a plausible starting point for building greater public confidence in the campaign finance process. They would help bring back some measure of competitiveness in Congressional elections. They would also maintain the perfectly legitimate role both of PACs and of voluntary, individual contributors in the financing of Congressional campaigns. We, therefore, urge their consideration and passage.

Senator DECONCINI. Thank you, Mr. Moore.

Let me ask you a couple of questions. I may submit a couple, too, for your expert to respond to. One that comes to my mind is that your suggestion here I think on page 8, where it would be illegal, you say, even to pass a law to have any lobbyist serve on the steering committee and attend any such receptions and pass any contribution and so on, I wonder why the National Association of Realtors do not just go ahead and do that and set an example and refuse to go to any of the receptions here in town and refuse to serve.

I have asked them to serve on my steering committee and I am most grateful that they are there, but if that is such a good idea I wonder why the realtors do not just set that example?

Mr. MOORE. Gary, why do you not—Gary has had some 14 or so years of experience in this.

Mr. SOUTH. Mr. Chairman, without being flippant, I suppose we could demur on the same grounds that many Members of the Senate and the House who do not favor the existence of PACs or favor lower PAC limits in fact solicit PACs and accept PAC contributions up to the full PAC limit. We are in a system where everyone does it. It is very difficult for one group or a small consortium of groups to unilaterally decide that they are not going to participate in a fairly significant activity that revolves around campaign fund raising, particularly as it occurs with incumbent Members of Congress when pressure is put on groups such as ours to serve on steering committees or to assist a Member of Congress, particularly one with which we have good relations in raising campaign funds.

So the question is a very good one. The answer is probably not a very good one, but it is about the only one I can offer.

Senator DECONCINI. That is fair. That is a fair answer. That is the game in town and that is the way it has to be played and I am quite grateful that the realtors serve on the steering committee that I have for my own election, but I just wonder that, if they feel so strongly as to suggest that this ought to be a law—and, frankly, I hope we do not do it because I do not agree with it, but if that was a strong position, I wonder why they did not just set the example, being one of the largest PACs and having a great deal of influence.

Another question I have, Mr. Moore, is what do you do when a national organization's political action committee supports a different candidate than the local political action committee. Do you think there should be some restraints on the national committee doing a private expenditure for one candidate, a challenger, where the local State organization in the same industry political action committee supports the incumbent?

Mr. MOORE. Well, we have had that problem before——

Senator DECONCINI. I know.

Mr. MOORE [continuing]. As you know, Senator, and it has not come up very often.

Senator DECONCINI. It does not.

Mr. MOORE. No.

Senator DECONCINI. Generally that does not come up.

Mr. MOORE. Generally that does not come up. It is very rare that it does, because of our PAC trustees. We have state trustees and they communicate back and forth.

Senator DECONCINI. I did not know. I just know one example. We all know that one. I thought maybe there had been others that I had missed.

My last question is your reference, Mr. Moore, to the presidential campaign financing law. Is it fair to say that you think it is not a good law and should not have been enacted, or are we better off with it than without it, in your opinion?

Mr. MOORE. I would say that our position for the presidential campaign is that it is a good law. Our concern is with the myriad of Representatives and Senators and how it would—

Senator DECONCINI. It is too much?

Mr. MOORE. Yes, it is too much. I mean it would be, we think, a bureaucratic nightmare.

Senator DECONCINI. What concerns this Senator, and the reason I asked the question—and I am glad you responded the way you did—I think the Presidential financing system came as a reaction to the activities of the Committee to Reelect the President and some of the charges, even criminal charges that came as a result of that. There was so much emphasis on raising money and some indictments and what have you and many, many abuses, that is what brought that law around.

I was not here, but the Senator from Alaska was and he may dispute what happened. That was my observation from sitting out in the hinterland, and I am concerned about that happening here. I can suggest a scenario—I am not going to do it because of time—but it worries me that we are going to end up having some criminal charges lodged against a political action committee of good reputation and every right to exist and every right to promote their position and also some candidates or incumbents. The reason I am so supportive of this bill is that I am trying to head that kind of scandal off and quite frankly I am glad it has not happened yet, but I am very fearful that it might.

The Senator from Alaska, do you have any questions?

Senator STEVENS. Well, I find your presentation very interesting. I have been off at another meeting on arms control, but I have read your statement. Let me say that I do not think many people are looking at one of the basic problems that motivates the provisions of S. 2, the public financing.

In my judgment, that comes from the fact that it takes so much time already to raise the money that is involved in politics. Let us take my own situation: I went back and looked and it took me 54 weekends in the six-year period that led up to the 1984 election to be involved in fund raising, not just for myself but for other candidates. That is more than a year of weekends out of a six-year term.

That may not seem like a lot of time to some people, but it is a considerable amount of time just to be involved—and I am talking about just the fund raising part of that campaign, not the appearances that I have made at home or not the debates that I had and the various other aspects of the campaign, just the fund raising alone.

I do not think anyone is looking at time as a commodity in the political process as it relates to the raising of money to be involved, whether as a challenger or as the incumbent.

Your comments in my opinion would increase the amount of time it would take to raise money, even at the current levels of expenditure. Have you looked at it that way?

Mr. MOORE. Well, no. We are trying to put a moratorium, if you will, on fund raising for the first six months in the House of Representatives and the first three years of a Senator, just do not go out and raise money. It was basically I guess—

Senator STEVENS. But you also say we could not raise it in Washington. I have to tell you, in my experience, the people of the real estate profession are more involved in politics than any other and they are very active. They do not have to be involved in PACs. In my State and the rest that I know, they are involved. They are the backbone of many political organizations. They know how much time they spend involved in the process. Have you analyzed how it would affect their lifestyle in terms of time?

Mr. MOORE. Oh, probably not specifically, but we do feel unequivocally that it gets our people involved from the grass roots, not only in the fund raising process but in the educational process of trying to pick and get behind and support financially and otherwise good people, and public—

Senator STEVENS. I am not being critical; I am trying to be analytical. You are suggesting that we take a period of time and prohibit the raising of any money during that period; take a geographical area and say you cannot raise any money there. That means if you are going to raise at least the same amount of money, you are going to increase the amount of time you take out of a shorter period and, as a matter of fact, you are going to increase even further the concentration of effort and the amount of time you spend outside of Washington in order to raise money. One of the reasons you have fund raisers here is that we are here and Members of Congress would have a greater burden under the suggestion that you cannot have fund raisers in Washington. I am just wondering if you have analyzed the impact of these suggestions on those involved in politics.

Mr. MOORE. Gary wants to respond to that.

Mr. SOUTH. Senator, we are not suggesting that an incumbent not be allowed to raise money in Washington. We are only addressing that topic as it relates to the solicitation of PACs for those events and the acceptance of PAC funds at those events. We are not making any prohibition at all on Washington fund raising, but what we are saying is that the PAC participation in those Washington fund raisers, particularly during the legislative season, ought to be severely curtailed, if not eliminated altogether. But there is no prohibition in our proposal on Washington fund raising per se if that Washington fund raising is done through the solicitation of individual givers and donors.

Senator STEVENS. Well, I find those very interesting suggestions. My impression would be that they would have a greater burden on incumbents than non-incumbents. Do you disagree with that?

Mr. SOUTH. Well, I think in terms of having run campaigns myself and having raised campaign funds, I certainly understand

what the burden is and how much of a time drag it is on the candidate, whether the candidate be a challenger or an incumbent or an open seat candidate to raise funds. However, I think when you look at incumbent fund raising, particularly with some of the huge carryovers that exist today, you have 54 Members of the House, for example, right now who are carrying war chest surpluses from their 1986 campaigns of \$250,000 or more. You have to ask yourself, when you look at the Senate side and some of the huge war chests that get carried over from campaign to campaign by incumbents, whether all the activity with regard to fund raising on the part of incumbents is really necessary or not for their next election campaign, or whether or not a lot of that activity is designed to build up a huge war chest both in advance of the campaign to scare off viable challengers and to carry over after the campaign for the same effect.

Senator STEVENS. Never having had that luxury, I cannot comment.

Thank you very much, Mr. Chairman.

Senator DECONCINI. Mr. Moore, thank you very much, and Mr. South. We appreciate the constructive suggestions that the realtors have made.

Mr. MOORE. Thank you, Senator.

Mr. SOUTH. Thank you.

Senator DECONCINI. Now we will hear from Mr. Joseph Fanelli, President of the Business-Industry Political Action Committee.

Mr. Fanelli, we welcome you here.

TESTIMONY OF JOSEPH J. FANELLI, PRESIDENT, BUSINESS-INDUSTRY POLITICAL ACTION COMMITTEE, WASHINGTON, DC

Mr. FANELLI. Thank you very much, Senator. I appreciate the opportunity to present the views of my organization here today.

My name is Joseph Fanelli, and I am President of Business Industry Political Action Committee, commonly known as BIPAC, now in its 24th year of operation. It is an independent, nonpartisan PAC which is not affiliated with any company, industry or association but which seeks to foster on a nationwide basis support for our private enterprise economic system and to help elect Members of Congress dedicated to a growth oriented free enterprise economy.

BIPAC's entire focus is on the Congress. It does not participate in presidential, gubernatorial, or State legislative races and it does not lobby.

At the outset, Senator, if I may say this, I will summarize the first half of the testimony, but if there is time available I would like to present the latter half from page 7 of the printed text that we submitted to the Committee. I will respect your judgment as to whether or not I am running late.

Senator DECONCINI. Why do you not go ahead and proceed.

Mr. FANELLI. All right.^z

Senator DECONCINI. I would like to finish with your testimony by 20 after if we could, so you do what you want to within that period of time.

Mr. FANELLI. All right, alert me if you feel I am going too long and I will terminate it immediately.

First, I would like to say that the opening part of our statement deals at length with the matter of public financing and it states the basic position of our organization, which is that it objects to and opposes public financing on both philosophical and practical grounds. I will list some of the reasons which are dealt with a little more at length in the text.

Some of the reasons are that we feel that the system of public financing is basically antithetical to the basic premise of our democratic system, and to the extent that we can promote and maintain a fully participatory type of election process, with citizens able to devote time, talent and resources to the election, to that extent I think our society and our political system will remain viable.

We think that public financing may intend to further reduce the incentive for voters to participate, that surely if public financing is instituted it would eliminate one aspect of citizen participation.

Next, it surely would be a drain on the Treasury, and particularly at a time when deficits are rampant. It may not be a very practical and timely premise to promote a public financing bill extended to the Senate but which later almost surely would be extended to the House with all of the implications involved.

Next, the public apparently does not really support the idea of utilizing their tax dollars to support campaigns, and this is indicated pretty strongly by the very low participation of the checkoff on the tax forms which now I understand is about a 21 percent level of tax designation for the presidential fund.

Then, thirdly, as I alluded to, if this bill that would bring about public financing in the Senate should prevail, it most surely ultimately would, the concept would later be applied to the House, in which case, with the thousands of candidates that would be involved, it surely would be apparent that you would need a huge bureaucracy to regulate such a system.

Next, briefly, there certainly is a false impression that exists about PACs, and I think one of the previous witnesses demonstrated some of these false impressions that exist in the mind of the public, although I must say that with a consistent drive of some of these organizations to denigrate the role of PACs in the process, apparently they have been somewhat successful in bringing about a concept of political action committees that is one that they perceive to be antithetical to the process. The word "PAC" or the acronym "PAC" almost has become a dirty word in the lexicon of some references to the political process at this time, but I think we have to take note of the fact that there are gross exaggerations as to the role of PACs in the process, when we consider that up through the 1984 election less than 30 percent of all expenditures on the House and Senate side were derived from political action committees.

As for the \$5,000 limit, there are very few PACs that go that high in their contributions. As a matter of fact, of the average that we have done through a survey, it indicates the average contribution to a Senatorial candidate is about \$1,100, statistics based on the results through the 1984 elections, and the average contribution to a House candidate is somewhere around \$300, so it really does not seem to be an excessive involvement in terms of the limits that are involved.

In addition to that, there has been about a 50 percent, at least a 50 percent inflation factor since 1974 which in effect means that the \$5,000 that was instituted in 1974 in terms of what it will buy in a campaign now is worth perhaps less than \$2,500, so I think that ought to be taken into consideration by members of the Committee.

Next, if S. 2 is promoted and adopted, we feel that there is this matter that is very serious which we all allude to as unintended consequences, and one of the unintended consequences that we feel is most serious is the matter of independent expenditures. Should this bill be approved it inevitably will cause a great influx of resources into independent expenditures, with all that that would imply in the process, and we think that is one of the strongest negatives to the promotion of the aggregate limit proposal within S. 2.

If I may, I will skip through the rest of the early part of our testimony and go to about the middle of it and try to focus a little attention on some aspects of the matter that may not have had particular focus put on it up until now.

Senator STEVENS. You are talking about page 7?

Mr. FANELLI. Page 7, the second paragraph, I pick up from there, if I may, and I say this: In our organization, we had our Board of Directors meet on this and dwell on it at great length, and I must say that one thing that surprised me when we had our meeting was the degree of concern by our Board of Directors on escalating campaign costs. They are genuinely very concerned about it, not only in terms of what it means for the fund raising difficulties that candidates for Congress have, but also their concern about it from a personal standpoint. They have been impacted very heavily with constant contacts by Members of Congress and political committees representing Members to contribute, and so they feel that escalating campaign costs certainly ought to be addressed.

However, they disagree that the way to get around or get to the matter of establishing limits on reasonable increases in campaign spending is to pursue public financing. There are at least two other ways in which limits could be imposed without resorting to public financing. One is the proposal, S. J. Res. 21, which was introduced by Senator Hollings, and which has been cosponsored by Senators Heflin, Cranston, Dodd, and Senator Stevens on this Committee, which would call for the adoption of a constitutional amendment to allow Congress to regulate its own elections.

We think it would be better to impose campaign spending through that method because in doing so you could maintain the private aspect of citizen participation, which you cannot really do under public financing.

The amendment as written reads, "The Congress may enact laws regulating the amounts of contributions and expenditures intended to affect elections to Federal offices." We are not necessarily endorsing that categorically, the idea of a constitutional amendment, but we feel the Committee ought to give that perhaps first consideration before going in the direction of extending the public financing system.

Senator STEVENS. I might say that there was a commitment from the Judiciary Committee this year to have a hearing on Senator Hollings' constitutional amendment, which I introduced first, then

Senator Baker, then somebody else last year, and this year by Senator Hollings.

Mr. FANELLI. May I ask a question, Senator? Is there any indication when such hearings will be held? In which case we would like to present some further views on it.

Senator STEVENS. They did make a commitment to hold such hearings in the Judiciary Committee.

Mr. FANELLI. Very good, then we look forward to possibly having an opportunity to present further views. As I say, we are not categorically endorsing that idea, but we do think that the Rules Committee should take a close look at that. Such an amendment, if adopted, would allow Congress to deal more effectively with a whole range of other concerns about campaign financing beyond setting limits on overall expenditures. That is, the language of the proposed amendment would have to be extended to include other aspects of campaigning.

BIPAC further believes there is another alternative to public financing if the principal objective is to place a limit on escalating campaign costs, and that is that the Senate itself could set limits on campaign expenditures.

I remember reading in last year's testimony before this committee, by Leon Billings who is the former Executive Director of the Democratic Senatorial Campaign Committee, that he went on at great length extending or explaining the rationale for proper setting of limits by the Senate through an adoption of Senate rules and, of course, if that should take place that would obviate the need to have the Senate vote on a controversial subject such as public financing, it would obviate the need for the House to go along with the Senate bill or to arrive at the identical conclusion, and it obviates the need for the President to have to make a judgment on it. The Senators themselves could set their own limits.

Senator DECONCINI. Are you suggesting then that rules changes would be adopted here, and if the challenger, the non-Member of the Senate, violated those rules then the Senate would vote to refuse to seat him?

Mr. FANELLI. That could be the ultimate sanction, that the Senate has the power to decide whether or not—

Senator DECONCINI. Do you think that is constitutional?

Mr. FANELLI. There may be a constitutional question, Senator. That certainly may be the case and it may have to go to court, but nevertheless it would not necessarily need to inhibit the Senate from taking that as the first approach before getting into such a labyrinth of controversial provisions such as are listed in S. 2.

These are just suggestions to point out that PAC restrictions—

Senator DECONCINI. Could you conclude here, finish up for us so we can wind up the hearing.

Mr. FANELLI. All right. I will just mention some of the other elements in our testimony,

Senator DECONCINI. If you would just summarize them for us in a couple of minutes so we can get to our last witness before 11:30.

Mr. FANELLI. All right. We recommend that individuals be allowed to contribute more in campaigns. We believe that individuals ought to be allowed to contribute more to political parties. We feel

that political parties ought to be able to contribute more to their candidates, to strengthen the parties' role.

We believe there might be consideration given to the restoration of modest individual contributions, say, up to \$100, to encourage participation by small contributors in the process.

On the role of the media, we feel the repeal of section 315 of the Communications Act to allow broadcasters to give more free time to the principal candidate in an election would be advisable, so that they would not in giving free time to principal candidates, have to simultaneously offer the same time to a myriad of peripheral candidates.

We also believe there ought to be disincentives for wealthy candidates to invest large amounts of their personal money in their own campaign, and to this effect we would endorse Senator Domenici's bill, I believe it is S. 625, which provides what we think to be an equitable formula for disincentives for wealthy candidates to overwhelm the process by virtue of their own personal wealth.

I will let it go at that, Senator, and hope that the Committee will have a chance to look at some of the other recommendations that we have made.

Thank you.

[The prepared statement of Mr. Fanelli follows:]

STATEMENT OF JOSEPH J. FANELLI, PRESIDENT, BUSINESS-INDUSTRY POLITICAL ACTION COMMITTEE

Mr. Chairman, my name is Joseph J. Fanelli. I am president of the Business-Industry Political Action Committee, commonly known as BIPAC. It is an independent, nonpartisan PAC which is not affiliated with any particular company, industry or association but which seeks to foster, on a nationwide basis, support of our private enterprise economic system and to help elect members of Congress dedicated to a growth-oriented, free enterprise economy. BIPAC's entire focus is on the Congress. It does not participate in gubernatorial or state legislative races — and it does not lobby.

BIPAC was founded in 1963, and in its 24 years of PAC activity it has observed many changes in campaign finance law and practice. From being one of a handful of business-oriented PACs in the early 1960's, BIPAC has witnessed the rapid growth in business employee PACs and other PACs within the constraints of changing federal laws and regulations.

The views expressed in this statement represent the consensus of BIPAC's Board of Directors, sixty-three in number, all top ranking executives in their respective companies.

From our extensive experience with business-employee PACs, their officers and members, and the recipients of their contributions, we believe PACs are a positive force in American politics. We reject the suggestion that PACs are a corrupting influence in our political system because it is totally disproven by our experience. When we hear such allegations, we wish others could know PACs as we do; surely they would recognize PACs as a legitimate avenue for political participation which allow ordinary citizens to pool their contributions with others of like mind and to take a more active and responsible role in political affairs through PAC involvement.

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In each of the past several election cycles, BIPAC and several other business organizations have conducted surveys of business-employee PACs to learn some basic facts about their activity. The results of these surveys refute myths about them. With your permission, I request that the results of our survey for the 1983-84 election be included in the record of these hearings. A survey to develop this data for the 1985-86 election cycle is currently underway and it will be made available upon completion.

We trust that members of the Rules Committee will review the survey results because they underline the fact that PACs are succeeding in motivating thousands of individuals to participate in the political process. The survey shows, too, that contrary to popular perceptions, the average contributions to candidates made by these PACs are relatively modest. They are certainly not large enough, individually, or in the aggregate, to "dominate" the political system, as is often charged. The vast majority of the employees who participate as voluntary individual contributors to business-employee PACs do so at a very modest level; they are not coerced to participate, and there is a high degree of democratic procedure in these PACs.

Proposals to further restrict PACs, such as those embodied in S.2, the Boren Bill, are ill advised because they are not needed nor are they justified. Since the contribution limit of \$5,000 per election was established over a dozen years ago, inflation alone has reduced the buying power of such a contribution by more than 50 percent. Moreover, only a very few business-employee PACs contribute the maximum; the average contribution, our survey reveals, is about \$1,100 in a Senate contest and about \$300 to candidates for the U.S. House. Costs for all aspects of political campaigning have risen substantially and there is evidence that media costs have grown much more rapidly than the cost of living index. Inasmuch as media costs usually receive the lion's share of a campaign budget, it is likely that a maximum contribution today buys much less than half of what it did in 1974 when the limits were established.

Apart from such practical measurement, a limit of just \$3,000, as is being proposed in S.2 (the Boren bill), would mean that a PAC, comprised of scores and perhaps many hundreds of givers, would be limited to the equivalent of what just three individuals could give collectively to a candidate. Rather than reduce the limits, therefore, one could present a justifiable case for increasing them to adjust for inflation.

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We also find ill advised the proposal to place an aggregate limit on the amount of PAC contributions a candidate may receive. Some of the smaller PACs are not in a position to make their contribution selections until fairly late in the election cycle. Others, who want to make a decision based on the shape of the race or the candidate's needs, may wish to wait until an informed decision can be made during the actual election phase of the cycle. With an aggregate limit, the smaller PACs might be frozen out of participation in many campaigns where the aggregate limit had been met by relatively few well-funded PACs who would be able to contribute early in the cycle. I doubt that Senators serving on the Rules Committee would want to diminish the participation of the smaller PACs which are truly grass roots political operations.

An aggregate limit would force a candidate to decide whether to accept the contributions of all PACs as offered until the limit is reached, or candidates might try to defer some, or limit some, to allow the "late bloomers" among the PACs the opportunity to express their support.

As has been noted many times by witnesses testifying before this committee, PAC contributions, as a percent of the total contributions for all congressional races, has remained well below 30 percent. For every dollar given, by individuals through a PAC, there have been more than two dollars from individuals given directly to a candidate and through party sources. That hardly indicates that PAC contributions are dominating campaign finance -- nor are they about to dominate campaign finance.

In the aftermath of previous election law reform, much has been said about "the unintended consequences" which result. We believe that further restrictions on PAC contributions to candidates will have the unintended consequence of forcing large PACs to indulge in much greater use of independent expenditures -- spending large amounts of money to support or oppose particular candidates independent of consultation with the candidate. There is no limit on what can be spent in this manner, and a few PACs already have experimented with spending a quarter-of-a-million dollars or more trying to defeat a candidate. We agree with proposals to tighten up on the definition of permissible independent expenditures, in order to keep this aspect of campaign expenditures within reasonable bounds.

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We know of no incumbent or potential candidate who would advocate an increase in independent expenditures whether it might be intended to help or hurt their causes. They prefer campaigns over which they -- the candidate -- have control, where they decide the message they want sent to the voters. Since further PAC restrictions will almost certainly bring about vastly increased independent expenditures, this is reason enough not to set aggregate limits in campaign expenditures.

Nevertheless, we acknowledge the great wave of public concern over the total amount of money spent in congressional campaigns. The amount of spending continues to increase, and one wonders if there is an end to the growth in sight. Despite unfounded and vague accusations, no charges of corruption have been brought. Many citizens have the perception that an undue amount of money is spent in congressional races and that this creates an unhealthy situation which may produce future scandals.

We understand the public concern and, to some extent, share the uneasiness. It is important, however, to put the matter in perspective.

While the amounts of money spent in campaign advertising seem to be very high, they are not excessive when compared to the money being spent on advertising of certain consumer products in the United States. Candidates actually are competing for the attention of the electorate against the constant din of other advertising. Any assessment of how much money is spent in campaigns should take into consideration how difficult it is to get the attention of the voters, even for a few seconds, to present a candidate's message.

What has driven the costs of campaigning so high? We believe the principal cause is the increasing use of media, including commercials with high production costs. Also important is the professionalization of campaigns. To compete effectively, most candidates believe they need expensive consultants and specialists and a cadre of paid workers. The old-style campaign organizations composed almost exclusively of volunteers are not just out of fashion; they have been discarded because they generally are no match for an opponent's well-financed professional team. When candidates are asked, "What is your campaign budget?" they like to respond, "Whatever it will take to win." If it takes professionalization to win, then that is what candidates will adopt.

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The inflation factor we have referred to has had an impact on all the ingredients of a political campaign beyond the cost of radio and television. It includes newspaper advertising, printing, postage, staff salaries, transportation, hotel, meals and other travel costs, office space, telephones, etc.

Another aspect that relates to cost is population growth; the number of voters to be reached is increasing. Albeit not a major factor, the growth and the diversity of the electorate are other reasons why the costs of campaigning continue to rise.

We do not suggest that campaign costs must inevitably continue to escalate, but we would caution those who lament the costs to not lose sight of the purpose of campaigns, which is to provide voters with adequate information about the candidates and the issues so that they may make reasoned choices on election day.

Over and over again, Senators appearing before this Committee have said they have to devote too much of their time raising campaign funds to the detriment of their Senatorial duties. We have learned from lobbyists, PAC managers and other business executives that they feel they are solicited too often and at times too heavy-handedly for campaign contributions by members of Congress and their fundraisers. Editorial writers and others insist there is too much money circulating in campaigns. And almost everyone thinks that campaigns are costing too much.

So where should we turn to solve the problem? Some think a system of campaigns financed by money from the federal treasury is the answer.

We reject that alternative on philosophical as well as practical grounds. BIPAC believes that our political system is predicated on the personal involvement of individuals, and anything that would weaken the prerogatives and incentives for individual voter participation would, in turn, weaken our democratic system which now allows all citizens the right to devote their time, talent and resources to help elect candidates of their choice.

We believe the average voter would resent government allocation of personal tax revenues to candidates with whom the voter disagrees.

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Moreover, there is no evidence that there is much support for taxpayer funding of Congressional elections.

To those who say such a system could be funded from voluntary taxpayer allocations, the continuing falloff of those who check the box on income tax forms to support the presidential campaign fund would indicate a great lack of enthusiasm for that system. Fewer than thirty percent of taxpayers now opt to designate a portion of tax revenues for presidential elections and the trend in recent years has been downward.

Furthermore, repeated opinion surveys have shown that public (taxpayer) financing of congressional campaigns is opposed 2-to-1 by the voters.

Such a system would further entrench incumbents, inasmuch as it would restrict challengers to the same spending limits as incumbents, who already receive considerable advantages from their incumbency. Some have placed the value of incumbency through use of the franking privilege for newsletters, travel and staff allowances as high as \$500,000 in every two year cycle; it may more nearly approach a million dollars, in our opinion.

We believe that a system of public (taxpayer) funding would further alienate the electorate from the candidate and political campaigns. The level of voter participation is disgracefully low now. It could plummet even further under public financing.

Public financing is not the answer. It is being grasped at by some out of desperation for a means through which limits could be placed on campaign spending.

It is a complicated matter and there are no easy solutions. As we recommended in our statement to this committee last year, BIPAC endorses the creation of a bi-partisan national commission to thoroughly review the entire field of campaign finance. It should determine if the voters are well served by current practices, and, if not, suggest ways to improve the communication of campaign information to them. Such a commission could review all of the concerns about campaign finance which currently tend to over-emphasize the role of political action committees and to ignore other aspects in our election system.

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We believe such a commission could do much to produce a truly factual report about what is happening and sweep away misconceptions that have taken root because of a constant barrage of insinuation.

There are a host of troubling concerns about campaign finance, but the critics seem always to fall back on further restrictions of PACs, which would leave untouched many other areas; or, they offer the alternative of public financing, which would create at least as many problems as it would solve.

If there is an imperative to establish limits on campaign spending, we would recommend consideration be given to a proposal (S.J. Res. 21), introduced by Senator Hollings (D-SC), which calls for adoption of a Constitutional Amendment to allow Congress to regulate its own elections.

Such an amendment, if adopted, would allow Congress to deal more effectively with the whole range of other concerns about campaign financing beyond setting limits on overall expenditures, including negative advertising, independent expenditures, candidates with unlimited personal resources, etc.

There may be objections to having the Congress so designated, in which case, a separate, independent entity such as a special commission appointed by the President and the Congress, the Federal Election Commission, or some other entity, could be designated.

To some, the suggestion of seeking a constitutional amendment may seem to be an extreme remedy, but it may be the only truly adequate way to deal with the problem of limiting campaign expenditures and the whole spectrum of problems about which so much concern has been expressed.

Several members of the Senate see it as the logical answer to these problems. BIPAC is not necessarily endorsing the constitutional amendment proposal at this time but we do believe it deserves careful consideration. We understand that hearings may be held on the constitutional amendment proposal and BIPAC may have an interest in expressing its views at that time.

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One other possibility for placing a limit on campaign expenditures should be mentioned. It has been suggested that the Congress itself could deal with many of these troubling questions by adopting its own rules regulating conduct of those seeking election to it. Rather than go through a legislative process in the Senate that requires passage of identical language by the House of Representatives, plus the approval of the President, the Senate could itself adopt rules setting limitations on expenditures which would be deemed acceptable and could decide what sanctions would be imposed on those who chose to ignore the Senate's rules. The force of public opinion surely would be a powerful factor in securing compliance of incumbents and challengers.

These suggestions serve to point out that PAC restrictions and public (taxpayer) financing are not the only alternatives which can be put forth in trying to respond to the concerns which are sincerely felt by many as they watch campaign fund-raising become ever more inventive, creative and burdensome to both the candidates and the contributors.

We believe there are several other steps which can be taken which will help to keep campaign spending within acceptable limits and to maintain public confidence in our political process.

While it is frequently alleged that PACs and lobbyists have undue influence in the political system, certain members of Congress themselves might well look to some of their own practices which tend to diminish public respect for the election process and the institution of Congress itself.

I am referring here to some potentially abusive practices by members of Congress that they themselves could correct under the present system.

For instance, why should a member of Congress have the "privilege," upon retirement from Congress, to convert campaign dollars to personal use? We know that only members who were in office as of January 8, 1980, have this privilege, but that includes 215 members of the House and a majority of the United States Senate.

Such an option fuels the intensity of fund raising by some members of Congress if for no other reason than to build up a generous retirement fund for themselves. The conversion of left over campaign funds to personal use should be clearly prohibited by law;

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they should be disposed of according to rules established by law. We understand a bill to recind this "privilege" has been introduced by Congressman Frenzel (R-MN) in the House. A similar action should be taken in the Senate to curb this avenue of abuse.

Next, the increasing practice by members of Congress to form PACs of their own establishes the unhealthy practice of members using money, contributed to them by voters, to contribute to other members of Congress, candidates, or causes. Contributors should know their contributions will be used to help the candidate to whom it is given -- not passed on to some other candidate.

We believe that each candidate (whether incumbent or not) should establish only one campaign committee for campaign receipts and expenditures and that it should be used solely for his or her own candidacy. Transfers from the campaign committee of one candidate to another should be prohibited. The possibilities of pernicious influence, through the transfers from one candidate's committee to another candidate's committee, seems to us greater than any of the other potential abuses that are enumerated.

Also, in case of Senate campaigns, it is common practice now for incumbents to start aggressive fund-raising efforts as many as four, five and even six years in advance of their election dates -- in some cases, pressuring potential PAC and other contributors to contribute prematurely and long before there is even speculation as to who the opposition candidate might be.

We at BIPAC follow the practice of contributing to candidates only during the two-year cycle. In the case of Senate candidates, this means giving only during the two years immediately preceding the election. We believe fundraising more than two years before an election can lead to many problems and promotes a "politics of intimidation" strategy by using a warchest to scare off potential competitors. We recommend limiting fund-raising in Senate races the two-year period preceeding the election.

In a similar vein, we do not believe that candidates should be allowed to carryover unlimited amounts of money from one election cycle to the next. Out of a huge campaign surplus, a candidate should be allowed to carryover some modest amount for political

(continued)

activities during the first part of the next term. The balance should be disposed of according to rules established by law, such as to party organizations, the federal treasury, charities, or returned to the original donors if that is feasible.

We are of the opinion that full and complete disclosure is still the best check on campaign spending. In this regard, we advocate reporting of campaign contributions to the Federal Election Commission be required on a more frequent basis -- perhaps monthly in the election year. BIPAC has reported to the FEC monthly for years even though there is no obligation to do so.

With the large amounts of money being contributed from private sources to political party building funds, etc., we believe it would be appropriate for these contributions to be reported in the interest of full disclosure.

The Federal Election Commission needs adequate funding to enforce the law as it is charged to do. It also should be encouraged in its efforts to provide the information it collects so as to give maximum access to the media, the public and to others who wish to obtain the data.

All of us have seen political advertising which we believe is tasteless, demeaning, distorted or totally unfounded. Fortunately, the American public is fairly sophisticated in evaluating media claims. Negative advertising often backfires against its producers. Still, there is the feeling that some better safeguards should be provided against malicious advertising against candidates.

We believe the proposal dealing with negative ads put forth in S.577, introduced by Senator Inouye (D-HI), is worth consideration. It would require sponsors of negative advertising to be clearly identified and, in the case of opposing candidates, actually have their photograph appear. If candidate "A" wants to cast aspersions on candidate "B," he or she is free to do so, but not in anonymity. A candidate's name and face would have to appear on TV ads; and negative comments would be clearly identified as to source.

There are constitutional impediments to any attempt to force television stations to grant free time to candidates.

(continued)

A far more practical approach would be repeal of Sec. 315 of the Federal Communication Act so as to allow broadcasters the opportunity to present fuller coverage of competing candidates without the obligation of having to grant equal time to fringe candidates and parties. If the principal candidates are given more free media time, they might spend less for media exposure. This approach has had the support of the National Association of Broadcasters.

Another problem, or inequity, that exists in our present system is the unlimited personal dollars that may be expended by candidates. Extremely wealthy candidates may in considerable amounts invest early in their own campaigns putting a candidate of modest personal resources at a disadvantage. Often a very wealthy candidate can intimidate or discourage an otherwise worthy candidate from running for office.

We have looked at S.625, introduced by Senator Domenici (R-NM), which addresses this problem and we believe the proposed formula would provide an effective way to obviate this imbalance in our present system.

The Boren Bill, S.2, brings in a new issue in its proposal to prohibit companies and associations which are foreign owned or controlled (50-percent or more) from sponsoring PACs. Current law prohibits foreign nationals from contributing to Congressional election campaigns. We understand and support the principle of keeping foreign influence out of U.S. elections.

This proposal, however, would have its primary impact on United States citizens who happen to be employees of a company whose majority ownership is foreign. This would surely bestow a type of second-class citizenship upon these employees, who would not be free to participate in congressional elections in the same manner other employees can.

Curiously, hourly-rated employees would still be free to contribute to their labor union sponsored PACs, but management employees could not have a company-sponsored employee PAC.

(continued)

Such a course of action could only be justified if we assume that the foreign-owners of a company would attempt to influence PAC decisions. In our experience, business employee PACs are independent of direction by top company executives. In the absence of proof to the contrary, we would expect that same principle of independence would apply to contributors of PACs of companies that happen to be foreign owned. What then could be the justification for denying this avenue of legitimate political involvement for the employees of those companies?

On another matter, virtually everyone supports the concept of full disclosure of political activity, yet by virtue of a court decision,^{1/} the Communist Party and its candidates are exempted from FEC reporting requirements^{2/} because of the alleged potential harrassment of its supporters. If that claim can be made for one group whose views are strongly opposed, it could be made for many other groups espousing controversial positions. We believe all candidates, parties and PACs should be subject to identical reporting requirements. It seems self-defeating to grant anonymity to any political group in the political fund-raising process.

We also advocate the restitution of a tax credit (or a deduction) for modest political contributions made to candidates, parties and PACs. We believe it is important to encourage the participation of small givers in the political process; studies have shown that those who make even small contributions are more likely to follow through by voting for their favored candidates. Small giving also is an important counterbalance to the big gifts which are made without any tax incentive.

To those who say this is only another form of public (taxpayer) funding, we point out that it would have little impact on the treasury compared to full taxpayer funding of elections. It has the virtue of being voluntary and the contributor selects the candidate to whom he or she is contributing.

We also would encourage increasing the limits on the amounts individuals may contribute directly to candidates and to political parties.

(continued)

^{1/} U.S. Court of Appeals, Second Circuit, FEC vs. Hall-Tyner Election Campaign Committee 5/6/1982 (Civil Action No. 81-6229)

^{2/} Socialist Workers Party may also be exempted.

To strengthen the role of political parties in the system, we recommend that the parties be permitted to contribute more to their candidates than the current maximum.

Increasing the potential for individual contributors and political party funding, would tend to maintain the relative role of PAC's in the process vis a vis individual and party contributions.

As a closing thought, we must keep in mind that political finance is much better reported and better disclosed today than at any time in the past. The Congressional election system in place now is basically sound. Any improvements that are to be made should be implemented without diminishing the rights of individuals and groups to participate in the process.

Senator DECONCINI. Thank you. Your full statement will be included in the record and I assure you that the committee will carefully look at it before we mark up the bill.

I have no questions. The Senator from Alaska?

Senator STEVENS. I have one. I notice that BIPAC suggests that we limit the fund raising activities of the incumbent Senator to the last two years of the six-year term.

Mr. FANELLI. Yes.

Senator STEVENS. Let me give you just an example. I come from a very small State, population-wise, and I have in almost every area of the State sort of a core group of supporters and we have organized what we call our "cache" group. That term comes from the Alaska experience where we used to put our meat to keep it up away from the animals. We have these "cache groups" and they pledge to contribute \$50 or \$100 a year for the last three or four years of the campaign.

Now, your BIPAC suggestion would shut that off, it would mean that those people who could only afford maybe \$100 or \$150 a year would just be in for a two-year period, rather than a four or five-year period. Why do you want to do that?

Mr. FANELLI. Well, the main reason we are making that recommendation is on the assumption that it would reduce the amount of money that would be necessary to run campaigns. Say if both of the candidates were limited to a two-year period to raise money, instead of a six-year period, say, for the Senate, the presumption is that the amount of money that could be raised would be less and the impact would be on both.

Senator STEVENS. Well, that means that an increased amount of money would have to come from PACs. For your information 65 to 70 percent of the money I get in my campaigns comes from individual contributions. Those contributions are spread over a five-year period usually. If fundraising is concentrated for a two-year period, by definition because of their economic situation those Alaskans could not increase what they contribute to their Senator.

I would urge you to reconsider that. I think that is going to be detrimental to individual support of campaigns. You might say that PACs could not contribute until the last two years of an election cycle, but I think it would be detrimental to our fund raising activities.

I think it is counterproductive to say we could not have financial support during the full six-year term.

Mr. FANELLI. I can appreciate how you feel, Senator. On the other hand, given a six-year period of time in which to raise money for Senatorial campaigns, there has been a tendency in recent years for incumbent Senators looking down the line four, five, six years toward the next election to run constant fund raising efforts, and I think it is a burden to themselves to have to raise money for six years and it is also a burden to those of us on the other end of the line, not only PACs but individuals, to be constantly pressured and sometimes in a very heavy handed way, I might say, based on some reports I have had, to give every year and oftentimes more than once every year to a campaign that may be four or five or six years ahead.

Senator STEVENS. But there is an individual limit of \$1,000. How much pressure do you put on an individual when they contribute \$1,000 during a primary cycle and \$1,000 in a general cycle?

Mr. FANELLI. Also this kind of solicitation so far ahead of an election implies that individuals and political action committees are being asked to make judgments in a campaign before there is even knowledge that there is an opposing candidate and before there is even knowledge of the subsequent voting record of the individual making the request. I can appreciate your particular point of view on that. I realize that it can be argued either way.

Senator DECONCINI. Thank you. Thank you for your testimony.

Mr. FANELLI. Thank you, Senator.

Senator DECONCINI. Next we will have Dr. Gary Jacobson, Professor of Political Science, University of California, San Diego.

Dr. Jacobson, we have had a chance to look at some of your testimony and it is going to be very helpful to us. Would you summarize it for us, please.

TESTIMONY OF DR. GARY JACOBSON, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF CALIFORNIA AT SAN DIEGO

Dr. JACOBSON. Yes, I will be extremely brief and distill what I have discovered in studying campaign finance at the congressional level for about fifteen years into about three minutes of clear wisdom.

The first point I want to make is that, as you all know, campaigns cost a lot of money and if we are going to have an election and voters are to be given a choice and are given a sufficient amount of information and given current American technology in political style, it is going to be very expensive to do that in most places.

So the primary need for any campaign finance system is to supply large amounts, sufficient amounts of money. The current system does that. On the other hand, it does that with some problems and I think the problems are two-fold.

One is the one that Senator Stevens just mentioned, that it just takes too much time and energy now to raise the amount of money that you need to run a full-scale campaign. It does so in part because of the reforms of the early seventies which fixed the amount of money you can give, as the amount spent kept going up, the chunks that come in have stayed the same size and so you have to go after more chunks and so it takes more time. That is one problem.

The second problem, which I think is much less of a problem in reality, is the question of the obligations that may be incurred by receiving money from political action committees and other interested groups. I am skeptical of Common Cause's position on this, but I do not think I have to advise Senators and that you will know better than I do what kind of pressures you are under from that, if any.

The third problem here is that it turns out that most of you just cannot find enough small individual donors to give the kind of money that would not cause any problem one way or the other, that resources are not there to get enough money to run a full-

scale campaign, so you necessarily rely on political action committees.

A possible solution, one that is suggested in S. 2, is a form of public funding and I think that is not necessarily a bad idea if a number of the points that Professor Malbin made are heeded. First of all, it is clear that public funding will be a useful system only if enough money is allowed to be spent to have serious campaigns in every State. I think the limits in S. 2 as they currently stand are too low. Doubling them might be reasonable, or somewhat less than doubling them might be reasonable, if you add to that the amount that can be spent also in the primary election campaign, and if we recognize that the cost of raising the funds should be less under a public funding scheme. A lot of the money that is spent now is spent on raising funds. Still, the limit ought to be high, it ought to be generous enough so that there is not much chance of really stifling any kind of serious competition, especially on the part of challengers.

Secondly, it should be designed so as not to waste too much money, that is, money going to candidates who are frivolous, who do not have much of a chance anyway. I think the threshold method will assure most of that. I do not think this is a huge problem, but it is something that has to be dealt with.

The third one is a huge problem and it does have to be dealt with, and that is what happens to the money that can no longer go into campaigns because now they are publicly funded. As currently stated, S. 2 does not mention primary elections, and an obvious place for that money to go would be into primary elections, so some consideration has to be given to what happens then or what can be done about that particular problem.

The second place they can go is independent spending. There is something in the bill along those lines. I am not sure it is adequate or will solve the problem. On the other hand, I think the problem may be exaggerated somewhat. Insofar as money is spent independently, it has not in the past looked terribly effective, that is, the independent spending after 1980 anyway does not seem to have gotten the independent spenders very far, so it may be somewhat less of a problem than most people think.

If you want just very briefly some specific kinds of numbers from my own research, I would think that for the smallest States, in the neighborhood of \$1 million ought to be enough to run a campaign these days with the use of little escalator clauses for inflation. For a State the size of California, my home State, I think that both of the candidates in this last election spent in the neighborhood of \$10 to \$12 million. A limit much below that I think would be a bad idea. This is not an election where a lot of money seemed to be wasted—it is an expensive State to campaign in, it costs a lot of money to reach voters under current electoral practices.

So if you decide to go toward some form of public financing, it is possible to do so without stifling competition and without creating an enormous set of new problems, if care is taken to recognize the realities of the political process and to assure that the fundamental purpose of having a campaign, that is to allow candidates to reach voters with their message, is guaranteed. Thank you.

[The prepared statement of Dr. Jacobson follows:]

STATEMENT OF GARY C. JACOBSON, STANFORD UNIVERSITY AND UNIVERSITY OF CALIFORNIA

Senator DeConcini and Members of the Committee:

I have been studying congressional campaign finance for about fifteen years and have written a book and numerous articles on the subject. The brief comments I offer this morning are distilled from this experience. They consist of things that I think ought to be kept in mind when planning any changes in campaign finance policy, including those proposed in S.2.

Elections are supposed to give voters a choice. For an informed choice, voters need to know something about both candidates. Most voters are not going to be even minimally informed without a vigorous campaign. And, under the current American structure of politics and communication technology, vigorous campaigns cost money. Lots of money. A good deal more money than most voters, and even some politicians, think seemly. So, the first requirement of any adequate campaign finance system is that it permit candidates--especially those not already well-known--to raise enough money to be serious competitors and so to give voters a real choice.

The current campaign finance system--particularly as it applies to Senate elections--fulfills this prerequisite. Serious candidates in recent elections have been able to raise enough money to get their messages out to voters. Why consider changing it? The reason seems to be that the current system is thought to violate a second important requirement for a good campaign finance system, that the way funds are raised not somehow undermine

the Senate as an institution. The system should not create unwelcome obligations on the part of recipients, and it should not take up so much time and energy that other important work (including campaigning itself) has to be neglected.

You, as U.S. Senators, know better than anyone else just how much of a problem these things are. Certainly it is clear from public statements that many of you think the problems are serious enough to require major changes in the way Senate campaigns are funded. Even if, like me, you believe that the problem of PACs and other contributors buying unfair advantage is vastly overstated, the time it now takes to raise adequate funds seems to be a real problem. Part of the reason, of course, is the FECA. Its limits on individual and PAC donations have remained the same while campaign expenses have increase more than fivefold. Candidates thus need to solicit a much larger number of donations. And it makes sense to concentrate fundraising efforts on PACs because they can give five times as much as individuals; it is simply a matter of efficiency in fundraising.

The bill before you, S.2, proposes partial public funding of general election campaigns for the Senate as a solution to these problems. It is flawed in a number of ways, but many of the flaws can be removed.

It is difficult, but not impossible, to design a good public financing system for Senate elections. The first requirement is that the system allow candidates who are not already well known to spend enough money to be competitive. Most public funding proposals I have seen have set spending ceilings far below what is necessary for an an obscure candidate to mount a competitive campaign. They would therefore serve to protect incumbents. S.2 is no exception; I agree with Professor Malbin that the ceiling should be at

least doubled. Given the purpose of election campaigns, it is preferable to err on the high side in setting spending limits. And it is essential that any ceilings established be allowed to rise with the cost of living (or, better, the cost of campaigning, if anyone can figure out a good index of it).

Another desirable feature of a public funding system is that it not waste money on frivolous candidacies. S.2's requirement that a threshold of private fundraising be surpassed seems to take care of this. The total amount of public money for which the candidate is eligible is then immediately granted. This is an excellent way to proceed, because it will cut down enormously on the time spent raising money (much more so than a strict matching scheme) and will allow campaigns to plan better and therefore to use resources more efficiently.

Two other major considerations regarding public funding need to be addressed. They are related. What happens to private money which can no longer be donated directly to Senate candidates in general elections? And what about primary elections? It is easy to imagine that, under S.2 as it currently stands, the scramble for private money would merely shift to the primary election, where there is no spending limit. Campaigning is campaigning, and candidates can pursue general election support in what is supposed to be a primary election campaign. One solution is primary election spending ceilings (presumably constitutional if the winner accepts public funding for the general election). Again, if imposed, these ceilings should be sufficiently high to allow full scale competition--and that means not very far below (generous) general election limits.

With limits on spending in primary and general elections, it is likely

that some PACs and other contributors will turn to "independent" spending. I think this would turn out to be less of a problem than many of you who are potential targets of independent campaigns assume, but high levels of independent spending may indeed occur in selected campaigns. S.2 offers some protection here, and it is probably adequate. There are other avenues for putting money into electoral politics--I concur with the view that the clever people who handle campaign money will always find some legal way to use it--but as long as each candidate has enough money to make his or her case to the public, I do not think it cause for much concern.

Senator DeCONCINI. Thank you.

Dr. Jacobson, do you suggest an amount specifically, a formula for—

Dr. JACOBSON. I do not have a formula. If you take all the States—

Senator DeCONCINI. What do you think of the formula that is in the bill?

Dr. JACOBSON. My calculations show it to be too low.

Senator DeCONCINI. Too low.

Dr. JACOBSON. Yes. Professor Malbin suggested doubling that. That would probably be safe, that is in the sense that if you double it you would not be likely to stifle competition anywhere. If you raised it by 50 or 60 percent and took into account that there would be some primary election spending, which is just as effective for reaching voters as general election spending, and if you took into account the fact that fund raising costs ought to be lower and therefore more of the money would be spent directly on campaigning, then it is possible that an increase of somewhat less than double would be adequate.

Senator DeCONCINI. Should we consider having an automatic inflation formula in there?

Dr. JACOBSON. Absolutely. That is one of the serious problems in the current Federal Election Campaign Act, that the amount that can be contributed has not gone up with inflation and therefore you have to chase more of the smaller packets of dollars.

Senator DeCONCINI. Though it is a lot of work, is not the system better off if you are chasing the smaller money—that is the wrong word—if you are out encouraging a lot more people to give small amounts than you are in chasing the large amounts of money?

Dr. JACOBSON. Insofar as you are campaigning at the same time, that is you are reaching out to voters and you are informing them, you are learning about them, you are getting some money from them, I think that is fine. The usual way of reaching small contributions now is through direct mail and I do not think that is particularly a wonderful way of being effective at raising money, simply because the kinds of appeals that you have to make to actually shake dollars loose through the mail tend to be extreme, polarizing, nasty, trying to scare people or make them mad so they will send you a check, and I do not think that that kind of money is more virtuous in some respect than \$2,000 given by a fat cat who is just your buddy.

Senator DeCONCINI. That is a good point. It just seems like one of the quandaries I have with this bill, the way we have been working on it so far, is we do not have enough incentive to get small contributors to give, particularly if you do limit the amount, that they cannot take anything after they reach that amount. What is your response to that of taking small contributions?

Dr. JACOBSON. I think Professor Malbin's suggestion of a 100 percent tax credit would be encouraging. It means that for the donor of a small amount, he is essentially free. He is giving away his money free. It is going to cost the Treasury something, but it means that you do not have to necessarily make people furious to write that check.

Senator DeConcini. So if you have this type of public financing, but then you would permit additional voluntary "small contributions" for both incumbents and challengers, for both candidates obviously, you think that is a workable way, and what would you limit that amount to?

Dr. JACOBSON. Oh, I would say in the neighborhood of \$500.

Senator DeCONCINI. \$500.

Dr. JACOBSON. I think you would get not very many \$500 contributions, and if it were a \$100 tax credit I think you would get a lot of \$100 contributions and not many beyond that. You could constrain that if you chose by using the tax law.

I think the key thing is to have a system that provides a sufficient amount of money without an enormous amount of aggravation, and that is the kind of very broad design that the Committee ought to be thinking about.

Senator DeCONCINI. Thank you, Dr. Jacobson.

The Senator from Alaska?

Senator STEVENS. Let me say to you I was not here when you testified but I have read it, as a matter of fact I marked it to take home this weekend. I am going to Alaska. I have an automatic reading period on that flight, ten hours up and ten hours back and I get a lot of reading done.

The interesting thing about the testimony was Dr. Malbin's chart that you mentioned which sets forth the limits under S. 2. Of course, if you make S. 2 realistic, you increase the cost. The more you increase the cost the more the chance is that the people on the other side of the aisle here are not going to support it anyway. So let us be very blunt about this, the expenditure limits have been reduced under S. 2 in order to secure support politically. We all know that if it is made realistic for the Senate it would triple at least if it was extended to the House. On a realistic basis we are talking about \$300-400 million a year. \$95 million under the terms of S. 2 alone.

Now, if you look at the table, you indicate that the winning candidates who defeated incumbent Republicans last year, in the last election, all spent considerably more than the limitations for expenditures under S. 2—

Dr. JACOBSON. Yes.

Senator STEVENS [continuing]. Which turns S. 2 into an incumbents' protection bill, does it not?

Dr. JACOBSON. At the current rate, and assuming all this money had been spent in the primary election. The figures which Professor Malbin has, in the column that shows the spending in this election, include primary and general elections.

Senator STEVENS. That is right.

Dr. JACOBSON. But assuming you are taking that out and just looking at the general election figures, yes, those numbers are much too low. But if you increase that limit and you include the possibility of primary election spending up to either that limit or some high proportion of it, and if you take into account reduced fund raising costs, which I think are something—again, you know much better than I do how much it costs you to raise the money that you spend on your campaign—that for most or all of them, to

get the right number, the challenger in 1986 could have spent a sufficient amount of money to win that election under such a law.

Senator STEVENS. Let me make two comments. One, under the current political realities of the United States, whether we like it or not, there is a substantial portion of the country where the primary election for Senate determines who is going to become the Senator.

Dr. JACOBSON. Yes.

Senator STEVENS. S. 2 does not affect that, does not provide public financing for primary elections.

Dr. JACOBSON. Yes.

Senator STEVENS. But the key in those States, where the Democratic Party is predominant, is you do not have to have any public financing since you are going to be assured of getting a Democratic seat. You do not have to use public financing.

Dr. JACOBSON. It seems to me that public financing would attract Republican candidates into those one-party, those noncompetitive States.

Senator STEVENS. But the chart that Professor Malbin had shows that public financing would not be sufficient to beat an incumbent.

Dr. JACOBSON. I agree with Professor Malbin that those numbers are too low.

Senator STEVENS. You and other witnesses have mentioned the cost of financing, the cost of raising money. For most of us—I cannot talk about the big States, because I am not a Senator from a large population State—for most of us, the cost of raising money is negligible because an individual can hold a fund raiser in their home and that cost is considered to be a personal contribution. Most of us hold our fund raising activities in private homes in our States and the cost of that fund raising is totally borne by the person who owns the home, who puts it on, and we are not paying the costs for campaign fund raising. I think those from New York or California understand that that is much more—

Dr. JACOBSON. Direct mail, for example, is quite expensive for fund raising.

Senator STEVENS. That is right, direct mail and the kind of fund raising that involves using a professional firm to raise money is 25 to 30 percent, is it not?

Dr. JACOBSON. Yes.

Senator STEVENS. I do think that we again have to come back to the question of the time. BIPAC says we should not have fundraisers spread over six years, we should only do it in a two-year cycle. In a two-year cycle I would be forced to go to a professional fund raiser and that would increase the amount of money in the cycle.

I thank you for your contribution. It is very interesting.

Senator DECONCINI. Professor Jacobson, let me ask you one question.

Dr. JACOBSON. Surely.

Senator DECONCINI. The Senator from Alaska points up that in some States the elections are really determined in the primary because one party has a big registration lead, and I agree that that is the case. But would not this bill, S. 2 or something like it, where there would be public financing, encourage the so-called minority party, the other party to send in a candidate?

Dr. JACOBSON. I would think so. All they would have to do is raise the threshold and suddenly they would have an adequately financed campaign.

Senator DECONCINI. And suddenly they would have the guarantee of some funds.

Dr. JACOBSON. Which in terms of local funds in those States may not be forthcoming under normal circumstances.

Senator STEVENS. But the rope is not long enough except to hang themselves under this public financing.

Dr. JACOBSON. If it is at low levels. If it is at high enough levels, then it should increase competition across the board.

Senator DECONCINI. Thank you. Thank you very much.

The Committee will stand in recess subject to the call of the Chair.

[Whereupon, at 11:44 a.m., the Committee adjourned subject to call of the Chair.]

[The following materials were received to be included in the record:]



APPENDIXES

APPENDIX 1A

II

100TH CONGRESS
1ST SESSION

S. 2

To amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. BOREN (for himself, Mr. BYRD, Mr. CHILES, Mr. KENNEDY, Mr. STENNIS, Mr. SANFORD, Mr. BINGAMAN, Mr. STAFFORD, Mr. DECONCINI, Mr. MELCHER, Mr. RIEGLE, Mr. PROXMIRE, Mr. FOWLER, Mr. SIMON, Mr. ADAMS, Mr. LEVIN, Mr. BUMPERS, Mr. INOUE, Mr. PELL, Mr. GORE, Mr. ROCKEFELLER, Ms. MIKULSKI, Mr. PRYOR, Mr. HARKIN, Mr. BIDEN, Mr. GRAHAM, Mr. CHAFEE, Mr. LEAHY, Mr. CONRAD, and Mr. NUNN) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Senatorial Election
- 4 Campaign Act of 1987".

★(Star Print)

1 SEC. 2. The Federal Election Campaign Act of 1971
2 (hereinafter referred to as "the Act") is amended by adding
3 at the end the following new title:

4 "TITLE V—SPENDING LIMITS AND PUBLIC FI-
5 NANCING FOR SENATE GENERAL ELECTION
6 CAMPAIGNS

7 "DEFINITIONS

8 "SEC. 501. For purposes of this title—

9 "(1) unless otherwise provided in this title the
10 definitions set forth in section 301 of this Act apply to
11 this title;

12 "(2) the term 'authorized committee' means, with
13 respect to any candidate for election to the office of
14 United States Senator, any political committee which
15 is authorized in writing by such candidate to accept
16 contributions or make expenditures on behalf of such
17 candidate to further the election of such candidate.

18 "(3) the term 'eligible candidate' means a candi-
19 date who is eligible under section 502 to receive pay-
20 ments under this title.

21 "(4) the term 'general election' means any elec-
22 tion which may directly result in the election of a
23 person to the office of United States Senator;

24 "(5) the term 'general election period' means the
25 period beginning on the day after the date on which

1 the candidate qualifies for the general election under
2 the law of the state involved and ending on the date of
3 such election or the date on which the candidate with-
4 draws from the campaign or otherwise ceases actively
5 to seek election, whichever occurs first.

6 “(6) the term ‘Senate Fund’ means the Senate
7 Election Campaign Fund maintained by the Secretary
8 of the Treasury in the Presidential Campaign Fund es-
9 tablished by section 9006(a) of the Internal Revenue
10 Code of 1954, (26 U.S.C. 9006(a)).

11 “(7) the term ‘major party’ means ‘major party’
12 as defined in section 9002(6) of the Presidential Elec-
13 tion Campaign Fund Act, (26 U.S.C. 9002 (6)).

14 “(8) the term ‘immediate family’ means a candi-
15 date’s spouse, and any child, stepchild, parent, grand-
16 parent, brother, half-brother, sister or half-sister, of the
17 candidate and the spouses of such persons and any
18 child, stepchild, parent, grandparent, brother, half-
19 brother, sister or half-sister of the candidate’s spouse
20 and the spouses of any such persons.

21 “ELIGIBILITY TO RECEIVE PAYMENTS

22 “SEC. 502. (a) To be eligible to receive payments under
23 this title a candidate shall, within seven days after qualifying
24 for the general ballot under the law of the State involved—

25 “(1) certify to the Commission under penalty of
26 perjury that during the period beginning on January 1

1 of the calendar year preceding the year of the general
2 election involved, or in the case of a special election
3 during the period beginning on the day on which the
4 vacancy occurs in the Senate office involved, such can-
5 didate and authorized committees of such candidate has
6 received contributions aggregating at least \$250,000 or
7 20 per centum of the limit set forth for such candidate
8 in section 503(b), whichever is less;

9 “(2) certify to the Commission under penalty of
10 perjury that 80 per centum of such contributions have
11 come from individuals residing in such candidate’s
12 State;

13 “(3) certify to the Commission under penalty of
14 perjury that at least one other candidate has qualified
15 for the same general election ballot under the law of
16 the state involved;

17 “(4) agree in writing that such candidate and the
18 candidate’s authorized committees—

19 “(A) will not make any expenditure which
20 exceeds the limitations established in section 503;

21 “(B) will not accept any contributions in vio-
22 lation of section 315;

23 “(C) will not accept any contribution for the
24 general election involved except to the extent that
25 such contribution is necessary to defray expendi-

5

1 tures for such election that in the aggregate do
2 not exceed the difference between the amount of
3 the expenditure limitation established in section
4 503(b) and the amount of payments provided for
5 in section 504(a) (1) and (2);

6 “(D) will deposit all payments received under
7 this section at a national or State bank in a sepa-
8 rate checking account which shall contain only
9 funds so received. No expenditures of funds re-
10 ceived under this section shall be made except by
11 checks drawn on such account.

12 “(E) will furnish campaign records, evidence
13 of contributions and other appropriate information
14 to the Commission;

15 “(F) will cooperate in the case of any audit
16 and examination by the Commission under section
17 507;

18 “(5) apply to the Commission for a payment as
19 provided for in section 504.

20 “(b) For the purposes of subsection (a)(1) and sections
21 504(a) (2) and (6), in determining the amount of contributions
22 received by a candidate and the candidate’s authorized
23 committees—

24 “(1) no contribution other than a gift of money
25 made by a written instrument which identifies the

1 person making the contribution shall be taken into
2 account;

3 "(2) no contribution made through or by an inter-
4 mediary or conduit as defined in section 315(a)(8) shall
5 be taken into account;

6 "(3) no contribution received from any person
7 other than an individual shall be taken into account,
8 and no contribution received from an individual shall be
9 taken into account to the extent such contribution ex-
10 ceeds \$250 when added to the amount of all other con-
11 tributions made by such individual to or for the benefit
12 of such candidate during the applicable period specified
13 in subsection (4); and

14 "(4) no contribution received prior to January 1
15 of the calendar year preceding the year of the general
16 election involved or received after the date on which
17 the general election involved is held shall be taken into
18 account, and in the case of a special election to contri-
19 bution received prior to the date on which the vacancy
20 occurs in the Senate office involved or after the date
21 on which such election is held shall be taken into
22 account.

23 "LIMITATIONS ON EXPENDITURES

24 "SEC. 503. (a) No candidate who receives a payment
25 for a general election under this title shall make expenditures
26 from the personal funds of such candidate, or the funds of any

1 member of the immediate family of such candidate, aggregat-
2 ing in excess of \$20,000, for such general election.

3 “(b) No candidate who receives a payment for a general
4 election under this title shall make expenditures for such gen-
5 eral election which in the aggregate exceed \$600,000 plus
6 25 cents multiplied by the voting age population of the state
7 involved in such general election, provided that such limita-
8 tion on expenditures shall be subject to the provisions of sec-
9 tion 504 (b) and (c).

10 “(c) For purposes of this section, voting age population
11 means the figures certified by the Commission under subsec-
12 tion (e) of section 315.

13 “(d) For purposes of this section, the amount set forth in
14 subsection (b) shall be increased at the beginning of each cal-
15 endar year based on the increase in the price index as deter-
16 mined under section 315(c) provided that for purposes of de-
17 termining such increase the term ‘base period’ used in section
18 315(c) shall mean the calendar year 1987.

19 “ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS

20 “SEC. 504. (a) An eligible candidate shall be entitled
21 to—

22 “(1) a payment under section 506 in the case of a
23 major party candidate, in an amount equal to the dif-
24 ference between the limitation for such candidate pro-
25 vided in section 503(b) and the amount required to be

1 raised by such candidate to establish eligibility under
2 section 502(a)(1);

3 “(2) matching payments under section 506 in the
4 case of a candidate who is not a major party candidate,
5 equal to the amount of each contribution received by
6 such candidate and such candidate’s authorized com-
7 mittees provided that in determining the amount of
8 each such contribution the provisions of section 502(b)
9 shall apply, the total amount of payments to which a
10 candidate is entitled under this subsection shall not
11 exceed 50 per centum of the limitation set forth in sec-
12 tion 503(b) applicable to such candidate, and the con-
13 tributions required by section 502(a)(1) shall not be eli-
14 gible for matching payments under this title;

15 “(3) the broadcast media rates provided under
16 section 315(b) of title 47, United States Code;

17 “(4) payments under section 506 equal to the ag-
18 gregate total amount of independent expenditures in
19 excess of \$25,000 made in the general election in-
20 volved by any person in opposition to, or on behalf of
21 an opponent of, such eligible candidate;

22 “(5) a payment under section 506 in the case of a
23 major party candidate, equal in amount to the amount
24 set forth in section 503(b) with regard to such candi-
25 date, if any candidate in the same general election not

1 eligible to receive funds under this title either raises
2 aggregate contributions or makes aggregate expendi-
3 tures for such election which exceed the amount set
4 forth under section 503(b) for such election; or

5 “(6) matching payments under section 506, in the
6 case of a candidate who is not a major party candidate,
7 equal to the amount of each contribution received by
8 such candidate and the candidate’s authorized commit-
9 tees if any candidate in the same general election not
10 eligible to receive payments under this title either
11 raises aggregate contributions or makes aggregate ex-
12 penditures for such election which exceed the amount
13 set forth in section 503(b) for such election, provided
14 that in determining the amount of each such contribu-
15 tion the provisions of section 502(b) shall apply, the
16 total amount of payments to which a candidate is enti-
17 tled under this subsection shall not exceed 50 per
18 centum of the limitation set forth in section 503(b) ap-
19 plicable to such candidate and contributions matched
20 under subsection 504(a)(2) or required to be raised
21 under section 504(a)(1) shall not be eligible to be
22 matched under this subsection.

23 “(b) A candidate who receives payments under subsec-
24 tion (a) (4), (5), or (6) may spend such funds to defray ex-

1 penditures in the general election without regard to the pro-
2 visions of section 503(b).

3 “(c) A candidate who receives payments under this sec-
4 tion may receive contributions and make expenditures for the
5 general election without regard to the provisions of section
6 502(a)(4)(C) or 503(b) if and when any candidate in the same
7 general election not eligible to receive payments under this
8 section either raises aggregate contributions or makes aggre-
9 gate expenditures for such election which exceed twice the
10 amount provided in section 503(b) for such election.

11 “(d) Payments received by a candidate under this sec-
12 tion shall be used to defray expenditures incurred with re-
13 spect to the general election period for such candidate. Such
14 payments shall not be used (1) to repay any loan to any
15 person or to make any payments, directly or indirectly, to
16 such candidate or to any member of the immediate family of
17 such candidate, (2) to make any expenditure other than ex-
18 penditures to further the general election of such candidate,
19 or (3) to make any expenditures which constitute a violation
20 of any law of the United States or of the State in which the
21 expenditure is made.

22 “CERTIFICATION BY COMMISSION

23 “SEC. 505. (a) No later than 48 hours after an eligible
24 candidate files a request with the Commission to receive pay-
25 ments under section 506 the Commission shall certify such
26 eligibility to the Secretary of the Treasury for payment in full

1 of the amount to which such candidate is entitled. The re-
2 quest referred to in the preceding sentence shall contain—

3 “(1) such information and be made in accordance
4 with such procedures, as the Commission may provide
5 by regulation; and

6 “(2) a verification signed by the candidate and the
7 treasurer of the principal campaign committee of such
8 candidate stating that the information furnished in sup-
9 port of the request, to the best of their knowledge, is
10 correct and fully satisfies the requirements of this title.

11 “(b) Certifications by the Commission under subsection
12 (a) and all determinations made by the Commission under this
13 title, shall be final and conclusive, except to the extent that
14 they are subject to examination and audit by the Commission
15 under section 507 and judicial review under section 508.

16 “ESTABLISHMENT OF FUND; PAYMENTS TO ELIGIBLE
17 CANDIDATES

18 “SEC. 506. (a) The Secretary shall maintain in the
19 Presidential Election Campaign Fund (“Fund”) established
20 by paragraph 9006(a) of the Internal Revenue Code of 1954,
21 in addition to any other accounts maintained under such sec-
22 tion, a separate account to be known as the ‘Senate Fund’.
23 The Secretary shall deposit into the Senate Fund, for use by
24 candidates eligible to receive payments under this title, the
25 amounts available after the Secretary determines that the
26 amounts in the Fund necessary for payments under subtitle

1 H of the Internal Revenue Code of 1954 are adequate. The
2 monies designated for such account shall remain available
3 without fiscal year limitation.

4 “(b) Upon receipt of a certification from the Commission
5 under section 505, the Secretary shall promptly pay to the
6 candidate involved in the certification out of the Senate Fund
7 the amount certified by the Commission.

8 “(c) If at the time of a certification by the Commission
9 under section 505 for payment to an eligible candidate, the
10 Secretary determines that the monies in the Fund and the
11 Senate Fund are not, or may not be, sufficient to satisfy the
12 full entitlement of all such eligible candidates, the Secretary
13 shall withhold from such payment such amount as he deter-
14 mines to be necessary to assure that an eligible candidate will
15 receive his or her pro rata share of his or her full entitlement.
16 Amounts so withheld shall be paid when the Secretary deter-
17 mines that there are sufficient monies in the Senate Fund to
18 pay such amounts, or portions thereof, to all eligible candi-
19 dates from whom amounts have been withheld, but, if there
20 are not sufficient monies in the Senate Fund to satisfy the full
21 entitlement of an eligible candidate, the amounts so withheld
22 shall be paid in such manner that each eligible candidate re-
23 ceives his or her pro rata share of his or her full entitlement.

24 “EXAMINATION AND AUDITS; REPAYMENTS

25 “SEC. 507. (a)(1) After each general election, the Com-
26 mission shall conduct an examination and audit of the cam-

1 paign account of 10 per centum of the eligible candidates of
2 each major party and 10 per centum of all other eligible can-
3 didates, as designated by the Commission through the use of
4 an appropriate statistical method of random selection to de-
5 termine among other things whether such candidates have
6 complied with the expenditure limits and other conditions of
7 eligibility and requirements of this title.

8 “(2) After each special election, the Commission shall
9 conduct an examination and audit of the campaign accounts
10 of each eligible candidate in such election to determine
11 whether such candidates have complied with the expenditure
12 limits and other conditions of eligibility and requirements
13 under this title.

14 “(3) The Commission may conduct an examination and
15 audit of the campaign accounts of any eligible candidate in a
16 general election if the Commission, by an affirmative vote of
17 four members, determines that there exists reason to believe
18 that such candidate has violated any provision of this title.

19 “(b) If the Commission determines that any portion of
20 the payments made to a candidate under this title was in
21 excess of the aggregate payments to which such candidate
22 was entitled, the Commission shall so notify such candidate,
23 and such candidate shall pay to the Secretary an amount
24 equal to the excess.

1 “(c) If the Commission determines that any amount of
2 any payment made to a candidate under this title was not
3 used as provided for in this title, the Commission shall so
4 notify such candidate and such candidate shall pay to the
5 Secretary an amount equal to 200 per centum of the amount
6 of such funds.

7 “(d) If the Commission determines that any candidate
8 who has received payments under this title has made expend-
9 itures which in the aggregate exceed by 5 per centum or less
10 the limitation set forth in section 503(b), the Commission
11 shall so notify such candidate and such candidate shall pay to
12 the Secretary an amount equal to the amount of excess
13 expenditure.

14 “(e) If the Commission determines that any candidate
15 who has received payments under this title has made expend-
16 itures which in the aggregate exceed by more than 5 per
17 centum the limitation set forth in section 503(b), the Commis-
18 sion shall so notify such candidate and such candidate shall
19 pay the Secretary an amount equal to three times the amount
20 of the excess expenditure.

21 “(f) Any amount received by an eligible candidate under
22 this title may be retained for a period not exceeding sixty
23 days after the date of the general election for the liquidation
24 of all obligations to pay general election campaign expenses
25 incurred during this general election period. At the end of

1 such sixty-day period any unexpended funds received under
2 this title shall be promptly repaid to the Secretary.

3 “(g) No notification shall be made by the Commission
4 under this section with respect to an election more than three
5 years after the date of such election.

6 “(h) All payments received under this section shall be
7 deposited in the Senate Fund.

8 “JUDICIAL REVIEW

9 “SEC. 508. (a) Any agency action by the Commission
10 made under the provisions of this title shall be subject to
11 review by the United States Court of Appeals for the District
12 of Columbia Circuit upon petition filed in such court within
13 thirty days after the agency action by the Commission for
14 which review is sought.

15 “(b) The provisions of chapter 7 of title 5, United States
16 Code, apply to judicial review of any agency action, as de-
17 fined in section 551(13) of title 5, United States Code, by the
18 Commission.

19 “PARTICIPATION BY COMMISSION IN JUDICIAL

20 PROCEEDINGS

21 “SEC. 509. (a) The Commission is authorized to appear
22 in and defend against any action instituted under this section
23 and under section 508 either by attorneys employed in its
24 office or by counsel whom it may appoint without regard to
25 the provisions of title 5, United States Code, governing ap-
26 pointments in the competitive service, and whose compensa-

1 tion it may fix without regard to the provisions of chapter 51
2 and subchapter III of chapter 53 of such title.

3 “(b) The Commission is authorized through attorneys
4 and counsel described in subsection (a), to institute actions in
5 the district courts of the United States to seek recovery of
6 any amounts determined under section 507 to be payable to
7 the Secretary.

8 “(c) The Commission is authorized, through attorneys
9 and counsel described in subsection (a), to petition the courts
10 of the United States for such injunctive relief as is appropri-
11 ate to implement any provision of this title.

12 “(d) The Commission is authorized on behalf of the
13 United States to appeal from, and to petition the Supreme
14 Court for certiorari to review, judgments or decrees entered
15 with respect to actions in which it appears pursuant to the
16 authority provided in this section.

17 “REPORTS TO CONGRESS; REGULATIONS

18 “SEC. 510. (a) The Commission shall, as soon as practi-
19 cable after each election, submit a full report to the Senate
20 setting forth—

21 “(1) the expenditures (shown in such detail as the
22 Commission determines appropriate) made by each eli-
23 gible candidate and the authorized committees of such
24 candidate;

1 “(2) the amounts certified by the Commission
2 under section 505 for payment to each eligible candi-
3 date;

4 “(3) the amount of repayments, if any, required
5 under section 507, and the reasons for each payment
6 required; and

7 “(4) the balance in the Presidential Election Cam-
8 paign Fund, and the balance in the Senate Fund and
9 any other account maintained in the Fund.

10 Each report submitted pursuant to this section shall be print-
11 ed as a Senate document.

12 “(b) The Commission is authorized to prescribe such
13 rules and regulations in accordance with the provisions of
14 subsection (c), to conduct such examinations and investiga-
15 tions, and to require the keeping and submission of such
16 books, records, and information, as it deems necessary to
17 carry out the functions and duties imposed on it by this title.

18 “(c) Thirty days before prescribing any rules or regula-
19 tion under subsection (b), the Commission shall transmit to
20 the Senate a statement setting forth the proposed rule or
21 regulation and containing a detailed explanation and justifica-
22 tion of such rules or regulation.

23 “AUTHORIZATION OF APPROPRIATIONS

24 “SEC. 511. There are authorized to be appropriated to
25 the Commission for the purpose of carrying out functions
26 under this title, such sums as may be necessary.

1 "SENATE FUND

2 "SEC. 512. Section 6096(a) of title 26 of the Internal
3 Revenue Code of 1954 is amended by striking '\$1' whenever
4 it appears in that subsection and inserting in lieu thereof '\$2'
5 and by striking '\$2' whenever it appears in that subsection
6 inserting in lieu thereof '\$4'.

7 "BROADCAST RATES

8 "SEC. 513. Section 315(b)(1) of the Communications
9 Act of 1934 (47 U.S.C. 315(b)(1)) is amended by striking the
10 semicolon and inserting in lieu thereof the following: '*Pro-*
11 *vided*, That in the case of a candidate in an election which
12 may directly result in the election of a person to the office of
13 United States Senator, this provision shall only apply if such
14 candidate has been certified by the Federal Election Commis-
15 sion as eligible to receive payments under title V of the Fed-
16 eral Election Campaign Act;'. ''.

17 CANDIDATE REPORTING REQUIREMENTS

18 SEC. 3. Section 304 of the Federal Election Campaign
19 Act of 1971 (2 U.S.C. 434) is amended by adding at the end
20 thereof the following new subsections—

21 "(d)(1) DECLARATION BY SENATE CANDIDATES.—Not
22 later than the day after the date on which a candidate quali-
23 fies for the ballot for an election which may directly result in
24 the election of a person to the office of United States Sena-
25 tor, each candidate in such election shall file with the Com-
26 mission a declaration of whether or not such candidate in-

1 tends to make expenditures in excess of the limitation on ex-
2 penditures for such election set forth in section 503(b).

3 “(2) Any declaration filed pursuant to paragraph (1)
4 may be amended or changed at any time within 7 days after
5 the filing of such declaration. Such amended declaration may
6 not be amended or changed further.

7 “(e) NOTIFICATION BY SENATE CANDIDATES.—Any
8 candidate who qualifies for the ballot for an election which
9 may directly result in the election of a person to the office of
10 United States Senator who is (i) not eligible to receive pay-
11 ments under section 502 and, (ii) who either raises aggregate
12 contributions or makes aggregate expenditures for such elec-
13 tion which exceed the amount specified in section 503(b) for
14 such Senate election, shall file a report with the Commission
15 within 24 hours after such contributions have been raised or
16 such expenditures have been made setting forth the candi-
17 date's total contributions and total expenditures for such elec-
18 tion. Such candidate thereafter shall file a report with the
19 Commission within 24 hours after either raising aggregate
20 contributions or making aggregate expenditures for such elec-
21 tion which exceed twice the amount specified in section
22 503(b), setting forth the candidate's total contributions and
23 total expenditures for such election.

24 “The Commission shall notify each candidate in the
25 election involved eligible to receive payments under section

1 502 about each such report within 24 hours after the report
2 has been filed.

3 “Notwithstanding the reporting requirement established
4 in this subsection, the Commission may make its own deter-
5 mination that a candidate in an election which may directly
6 result in the election of a person to the office of United States
7 Senator who is not eligible to receive payments under section
8 502 has raised aggregate contributions or made aggregate
9 expenditures for such election which exceed the amount spec-
10 ified in section 503(b) for such election or exceed double such
11 amount. The Commission shall notify each candidate in the
12 general election involved eligible to receive payments under
13 section 502 about each such determination within 24 hours
14 after such determination is made.

15 “(f) INDEPENDENT EXPENDITURES RELATING TO
16 SENATE CANDIDATES.—Any independent expenditures (in-
17 cluding those described in subsection (b)(6)(B)(iii)) by any
18 person with regard to an election which may directly result in
19 the election of a person to the office of United States Senator
20 which in the aggregate total more than \$25,000 shall be re-
21 ported by such person to the Commission within 24 hours
22 after such independent expenditures are made. Thereafter,
23 any independent expenditures by such person in the same
24 election aggregating more than \$5,000 shall be reported by

1 such person to the Commission within 24 hours after such
2 independent expenditures are made.

3 “Such statements shall be filed with the Commission
4 and Secretary of State for the state of the election involved
5 and shall contain the information required by subsection
6 (b)(6)(B)(iii) of this section and a statement under penalty of
7 perjury by the person making the independent expenditures
8 indicating whom the independent expenditures are actually
9 intended to help elect or defeat. The Commission shall notify
10 any candidate in the election involved who is eligible to re-
11 ceive payments under section 502 about each such report
12 within 24 hours after the report is made.

13 “Notwithstanding the reporting requirements estab-
14 lished in this paragraph, the Commission may make its own
15 determination that a person has made independent expendi-
16 tures with regard to an election which may directly result in
17 the election of a person to the office of United States Senator
18 that in the aggregate total more than \$25,000, and thereafter
19 that in the aggregate total more than \$5,000.

20 “The Commission shall notify each candidate in the
21 election involved eligible to receive payments under section
22 502 about each such determination within 24 hours after
23 such determination is made.”.

1 LIMITS ON CONTRIBUTIONS BY MULTICANDIDATE
2 POLITICAL COMMITTEES

3 SEC. 4. Section 315(a)(2) of the Federal Election Cam-
4 paign Act of 1971 (2 U.S.C. 441a(a)(2)) is amended—

5 (1) by striking out “or” at the end of subpara-
6 graph (B);

7 (2) by striking out “\$5,000.” in subparagraph (A)
8 and inserting in lieu thereof “\$3,000;”; and

9 (3) by striking out the period at the end of sub-
10 paragraph (C) and inserting in lieu thereof a semicolon;
11 and

12 (4) by adding at the end the following new sub-
13 paragraphs:

14 “(D) to any candidate and his authorized political
15 committees with respect to—

16 “(i) a general or special election for the office
17 of Representative in, or Delegate or Resident
18 Commissioner to, the Congress (including any pri-
19 mary election, convention, or caucus relating to
20 such general or special election) which exceed
21 \$100,000 (\$125,000 if at least two candidates
22 qualify for the ballot in the general or special
23 election involved and at least two candidates qual-
24 ify for the ballot in a primary election relating to
25 such general or special election) when added to

1 the total of contributions previously made by mul-
2 ticandidate political committees, other than multi-
3 candidate committees of a political party, to such
4 candidate and his authorized political committees
5 with respect to such general or special election
6 (including any primary election, convention, or
7 caucus relating to such general or special elec-
8 tion); or

9 “(ii) a runoff election for the office of Repre-
10 sentative in, or Delegate or Resident Commission-
11 er to, the Congress which exceed \$25,000 when
12 added to the total of contributions previously
13 made by multicandidate political committees,
14 other than multicandidate committees of a politi-
15 cal party, to such candidate and his authorized
16 political committees with respect to such runoff
17 election; or

18 “(E) to any candidate and is authorized political
19 committees with respect to—

20 “(i) a general or special election for the office
21 of Senator (including any primary election, con-
22 vention, or caucus relating to such general or spe-
23 cial election) which exceed the greater of
24 \$175,000 (\$200,000 if at least two candidates
25 qualify for the ballot in the general or special

1 election involved and at least two candidates qual-
2 ify for the ballot in a primary election relating to
3 such general or special election) or the amount
4 equal to \$35,000 times the number of Represent-
5 atives to which the State involved is entitled,
6 when added to the total of contributions previous-
7 ly made by multicandidate political committees,
8 other than multicandidate committees of a politi-
9 cal party, to such candidate and his authorized
10 political committees with respect to such general
11 or special election (including any primary election,
12 convention, or caucus relating to such general or
13 special election);

14 “(ii) a runoff election for the office of Senator
15 which exceed the greater of \$25,000 or the
16 amount equal to \$12,500 times the number of
17 Representatives to which the State involved is en-
18 titled, when added to the total of contributions
19 previously made by multicandidate political com-
20 mittees, other than multicandidate committees of
21 a political party, to such candidate and his author-
22 ized political committees with respect to such
23 runoff election; or

24 “(iii) a general or special election for the
25 office of Senator (including any primary election,

1 runoff election, convention, or caucus relating to
2 such general or special election) which exceed
3 \$750,000 when added to the total of contributions
4 previously made by multicandidate political com-
5 mittees, other than multicandidate committees of
6 a political party, to such candidate and his author-
7 ized political committees with respect to such
8 general or special election (including any primary
9 election, convention, or caucus relating to such
10 general or special election).”; or

11 “(F) to the political committees established and
12 maintained by a national political party, which are not
13 the authorized political committees of any candidate, in
14 any two-year election cycle, which, in the aggregate,
15 exceed \$2,000,000 when added to the total of contri-
16 butions previously made by multicandidate political
17 committees in such election cycle.”.

18 INTERMEDIARY OR CONDUIT

19 “SEC. 5. Section 315 of the Federal Election Campaign
20 Act of 1971 (2 U.S.C. 441a(a)) is amended—

21 (1) by redesignating subsection (8) as subpara-
22 graph (8)(A);

23 (2) by adding at the end, the following new sub-
24 paragraphs:

25 “(B) A gift, subscription, loan, advance or deposit of
26 money or anything of value to a candidate shall be considered

1 a contribution both by the original source of the contribution
2 and by any intermediary or conduit if the intermediary or
3 conduit (i) exercises any control or any direction over the
4 making of the contribution; or (ii) solicits the contribution or
5 arrange for the contribution to be made and directly or indi-
6 rectly makes the candidate aware of such intermediary or
7 conduit's role in soliciting or arranging the contribution for
8 such candidate; or (iii) engages in any activities of the same
9 kind which resulted in the intermediary or conduit reporting
10 such activities to the Commission under subsection (A) prior
11 to January 1, 1987.

12 “(C) For purposes of subsection (B), a contribution shall
13 not be considered to be a contribution by an intermediary or
14 conduit to the candidate if (i) the intermediary or conduit
15 has been retained by the candidate's committee for the pur-
16 pose of fundraising and is reimbursed for expenses incurred in
17 soliciting contributions; (ii) in the case of an individual, the
18 candidate has expressly authorized the intermediary or con-
19 duit to engage in fundraising, or the individual occupies a
20 significant position within the candidate's campaign organiza-
21 tion; or (iii) in the case of a political committee, the interme-
22 diary or conduit is an authorized committee of the candi-
23 date.”.

INDEPENDENT EXPENDITURES

1
2 SEC. 6. (a) Section 301(17) of the Federal Election
3 Campaign Act of 1971 (2 U.S.C. 431 (17)) is amended by
4 adding the following:

5 "For purposes of this subsection, an expenditure shall
6 not constitute an expenditure in coordination, consultation, or
7 concert with a candidate and shall constitute an 'independent
8 expenditure' where,

9 "(A) there is any arrangement, coordination, or
10 direction with respect to the expenditure between the
11 candidate or the candidate's agent and the person
12 making the expenditure;

13 "(B) in the same election cycle, the person
14 making the expenditure (including any officer, director,
15 employee or agent of such person) is or has been au-
16 thorized to raise or expend funds on behalf of the can-
17 didate or the candidate's authorized committees; or is
18 or has been an officer of the candidate's authorized
19 committees, or is or has been receiving any form of
20 compensation or reimbursement from the candidate, the
21 candidate's authorized committees, or the candidate's
22 agent;

23 "(C) the person making the expenditure (including
24 any officer, director, employee or agent of such person)
25 has communicated with, advised, or counseled the can-

1 didate or the candidate's agents at any time on the
2 candidate's plans, projects, or needs relating to the
3 candidate's pursuit of nomination for election, or elec-
4 tion to Federal office, in the same election cycle, in-
5 cluding any advice relating to the candidate's decision
6 to seek Federal office;

7 “(D) the person making the expenditure retains
8 the professional services of any individual or other
9 person also providing those services to the candidate in
10 connection with the candidate's pursuit of nomination
11 for election, or election to Federal office, in the same
12 election cycle, including any services relating to the
13 candidate's decision to seek Federal office; or

14 “(E) the person making the expenditure (including
15 any officer, director, employee or agent of such person)
16 has communicated or consulted at any time during the
17 same election cycle about the candidate's plans,
18 projects, or needs relating to the candidate's pursuit of
19 election to Federal office, with: (i) any officer, director,
20 employee or agent of a party committee that has made
21 or intends to make expenditures or contributions, pur-
22 suant to Section 315(a), (d) or (h) in connection with
23 the candidate's campaign; or (ii) any person whose pro-
24 fessional services have been retained by a political
25 party committee that has made or intends to make ex-

1 penditures or contributions pursuant to Section 315(a),
2 (d) or (h) in connection with the candidate's campaign;
3 or

4 “(F) the expenditure is based on information pro-
5 vided to the person making the expenditure directly or
6 indirectly by the candidate or the candidate's agents
7 about the candidate's plans, projects, or needs, provid-
8 ed that the candidate or the candidate's agents are
9 aware that the other person has made or is planning to
10 make expenditures expressly advocating the candidate's
11 election; or

12 “(G) the expenditure is made by a person with
13 the intention of seeking or obtaining any legislative
14 benefit or consideration from the candidate by reason
15 of the expenditure.”.

16 INDEPENDENT EXPENDITURE BROADCAST DISCLOSURE

17 SEC. 7. Section 318(a)(3) of the Federal Election Cam-
18 paign Act of 1971 (2 U.S.C. 441d(a)(3)) is amended by delet-
19 ing the period and inserting the following: “: *Provided*, That
20 (a) whenever any person makes an independent expenditure
21 through a broadcast communication on any television station,
22 the broadcast communication shall include a statement clear-
23 ly readable to the viewer that appears continuously during
24 the entire length of such communication setting forth the
25 name of such person and in the case of a political committee,
26 the name of any connected or affiliated organization, and (b)

1 whenever any person makes an independent expenditure
2 through a newspaper, magazine, outdoor advertising facility,
3 direct mailing or other type of general public political adver-
4 tising, the communication shall include, in addition to the
5 other information required by this subsection, that such
6 person paid for the communication and in the case of a politi-
7 cal committee, the name of any connected or affiliated orga-
8 nization and the name of the president or treasurer of such
9 organization, and the following sentence: 'The cost of pre-
10 senting this communication is not subject to any campaign
11 contribution limits.' ''.

12 CONTRIBUTIONS BY FOREIGN NATIONALS

13 SEC. 8. Section 319 of the Federal Election Campaign
14 Act of 1971 (2 U.S.C. 441e) is amended—

15 (1) in subsection (a) by inserting after "foreign na-
16 tional" the first place it appears the following: "includ-
17 ing any separate segregated fund or nonparty, multi-
18 candidate political committee of a foreign national";
19 and

20 (2) in subsection (b) by adding before the semi-
21 colon at the end thereof the following: ", but shall in-
22 clude any partnership, association, corporation, or sub-
23 sidiary corporation organized under or created by the
24 laws of the United States, a State, or any other place
25 subject to the jurisdiction of the United States if more

3 PERSONAL LOANS

7 “(9) For purposes of the limitations imposed by this
8 section, no contributions received by a candidate or the can-
9 didate’s authorized committees shall be used to repay any
0 loan by the candidate to the candidate or to the candidate’s
1 authorized committees.”.

SEC. 10. If any provision of this Act or any amendment made by this Act, or the application of any such provision of this Act of any amendment made by this Act, or the application of any such provision to any person or circumstance is held invalid, the validity of any other such provision and the application of such provision to other persons and circumstances shall not be affected thereby.

21 SEC. 11. This Act and the amendments made by this
22 Act shall become effective for any election held more than
23 one year after the date of enactment of this Act.

100TH CONGRESS
1ST SESSION

S. 50

To amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns, to change certain contribution limits for elections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. MOYNIHAN introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns, to change certain contribution limits for elections, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Senate Campaign Fi-
4 nance Act of 1987".

1 CHANGES IN CONTRIBUTION LIMITS; DEFINITION OF
2 INDEPENDENT EXPENDITURES

3 SEC. 2. (a) Section 315(a)(1)(A) of the Federal Election
4 Campaign Act of 1971 is amended by striking out "\$1,000"
5 and inserting in lieu thereof "\$2,000".

6 (b) Section 315(a)(2) of the Federal Election Campaign
7 Act of 1971 is amended—

8 (1) by striking out "or" at the end of subpara-
9 graph (B);

10 (2) striking out "\$5,000." in subparagraph (C)
11 and inserting in lieu thereof "\$3,000;".

12 (c) Section 301(17) of the Act is amended to read as
13 follows:

14 "(17) The term 'independent expenditure' means
15 an expenditure by a person expressly advocating the
16 election or defeat of a clearly identified candidate
17 which is made without cooperation or consultation with
18 any candidate, or any authorized committee or agent of
19 such candidate, and which is not made in concert with,
20 or at the request or suggestion of, any candidate, or
21 any authorized committee or agent of such candidate.
22 For the purposes of this subsection, 'cooperation or
23 consultation with any candidate' with respect to an
24 election cycle means, but is not limited to the follow-
25 ing—

1 “(A) the person making the independent ex-
2 penditure communicates with, advises, or counsels
3 the candidate at any time on the candidate’s
4 plans, projects, or needs relating to the candi-
5 date’s pursuit of nomination for election, or elec-
6 tion, to Federal office, in the same election cycle,
7 including any advice relating to the candidate’s
8 decision to seek Federal office;

9 “(B) the person making the independent ex-
10 penditure includes as one of its officers, directors,
11 or other employees an individual who communi-
12 cated with, advised or counseled the candidate at
13 any time on the candidate’s plans, projects, or
14 needs relating to the candidate’s pursuit of nomi-
15 nation for election, or election, to Federal office,
16 in the same election cycle, including any advice
17 relating to the candidate’s decision to seek Feder-
18 al office; and

19 “(C) the person making the independent ex-
20 penditure retains the professional services of any
21 individual or other person also providing those
22 services to the candidate in connection with the
23 candidate’s pursuit of nomination for election, or
24 election, to Federal office, in the same election

1 cycle, including any services relating to the candi-
2 date's decision to seek Federal office.”.

3 SEC. 3. The Federal Election Campaign Act of 1971 is
4 amended by adding at the end thereof the following new sub-
5 chapter:

6 **“SUBCHAPTER III—PUBLIC FINANCING OF**
7 **SENATE GENERAL ELECTION CAMPAIGNS**

8 **“DEFINITIONS**

9 “SEC. 501. For purposes of this subchapter—

10 “(1) unless otherwise provided in this subchapter
11 the definitions set forth in section 301 of this Act apply
12 to this subchapter;

13 “(2) ‘authorized committee’ means, with respect
14 to any candidate for election to the United States
15 Senate, any political committee which is authorized in
16 writing by such candidate to accept contributions, incur
17 expenses, or make expenditures on behalf of such can-
18 didate to further the election of such candidate. Such
19 authorization shall be addressed to the chairman of the
20 political committee, and a copy of such authorization
21 shall be filed by each candidate with the Commission.
22 A withdrawal of any authorization shall be in writing
23 and shall be addressed and filed in the same manner as
24 the authorization;

5

1 “(3) ‘candidate’ means an individual who has been
2 nominated for election to the office of United States
3 Senator by a major or minor party or who has qualified
4 to have his or her name on the general election ballot;

5 “(4) ‘eligible candidate’ means a candidate who is
6 eligible, under section 502, for payments under this
7 subchapter;

8 “(5) ‘expenditure report period’ with respect to an
9 election means—

10 “(A) in the case of a major party candidate,
11 the period beginning on the date such candidate
12 becomes an eligible candidate and ending 30 days
13 after the date of the election or the date such can-
14 didate is no longer an eligible candidate, whichev-
15 er date is earlier; or

16 “(B) in the case of a candidate other than a
17 candidate of a major party, the same period as the
18 expenditure report period of the major party
19 which has the shortest expenditure report period
20 for such election;

21 “(6) ‘election’ means any regularly scheduled gen-
22 eral, special, or runoff election, other than a primary
23 election, held to elect a candidate to the United States
24 Senate;

6

1 “(7) ‘fund’ means the Senate General Election
2 Campaign Fund maintained by the Secretary of the
3 Treasury in the Presidential Election Campaign Fund
4 established by section 9006(a) of the Internal Revenue
5 Code of 1954;

6 “(8) ‘major party’ means with respect to any elec-
7 tion, a political party whose candidate for the office of
8 United States Senator in any of the three preceding
9 elections received, as the candidate of such party, 25
10 percent or more of the total number of popular votes
11 received by all candidates for such office;

12 “(9) ‘minor party’ means with respect to any elec-
13 tion, a political party whose candidate for the office of
14 Senator in any of the three preceding elections re-
15 ceived, as the candidate of such party, 5 percent or
16 more, but less than 25 percent of the total number of
17 popular votes received by all candidates for such office;

18 “(10) the term ‘qualified campaign expense’
19 means an expense—

20 “(A) incurred by the candidate or the author-
21 ized committee of the candidate for the office of
22 United States Senator to further his or her elec-
23 tion to such office,

24 “(B) incurred within the expenditure report
25 period, or incurred before the beginning of such

1 period to the extent such expense is for property,
2 services, or facilities used during such period, and

3 “(C) neither the incurring nor paying of
4 which constitutes a violation of any law of the
5 United States or of the State in which such ex-
6 pense is incurred or paid.

7 “An expense shall be considered as incurred by a can-
8 didate or an authorized committee if it is incurred by a
9 person authorized by such candidate or such commit-
10 tee, as the case may be, for expenses on behalf of such
11 candidate or such committee.

12 “CONDITION FOR ELIGIBILITY FOR PAYMENTS

13 “SEC. 502. (a) In order to be eligible to receive any
14 payments under this subchapter, the candidate shall agree, in
15 writing—

16 “(1) to obtain and furnish to the Commission such
17 evidence as it may request of the qualified campaign
18 expenses and contributions of such candidate,

19 “(2) to keep and furnish to the Commission such
20 records, books, and other information as it may re-
21 quest, and

22 “(3) to an audit and examination by the Commis-
23 sion under section 507 and to pay or repay any
24 amounts required under such section.

1 “(b) To be eligible to receive payments under section
2 503, the candidate of a major party shall certify to the Com-
3 mission, under penalty of perjury, that—

4 “(1) such candidate is seeking election to the
5 United States Senate and such candidate and at least
6 one other major party or minor party candidate have
7 qualified for the election ballot under the law of the
8 State involved,

9 “(2) such candidate and the authorized commit-
10 tees of such candidate will not incur qualified campaign
11 expenses in excess of the aggregate payments to which
12 they are entitled under section 503, unless otherwise
13 provided in this subchapter,

14 “(3) no contributions to defray qualified campaign
15 expenses have been or will be accepted by such candi-
16 date or any of the authorized committees of such can-
17 didate except to the extent necessary to make up any
18 deficiency in payments received out of the fund because
19 of the application of section 506(c), and

20 “(4) no contributions have been or will be accept-
21 ed by such candidate or any authorized committees of
22 such candidate to defray expenses which are not quali-
23 fied campaign expenses.

24 “(c) In order to be eligible to receive any payments
25 under this subchapter, a candidate other than a candidate of a

1 major party shall certify to the Commission under penalty of
2 perjury, that—

3 “(1) such candidate is seeking election to the
4 United States Senate and such candidate and at least
5 one other candidate of a major party have qualified for
6 the election ballot under the law of the State involved,

7 “(2) such candidate and the authorized commit-
8 tees of such candidate will not incur qualified campaign
9 expenses in excess of the aggregate payments to which
10 an eligible candidate of a major party is entitled under
11 section 503, unless otherwise provided in this subchap-
12 ter, and

13 “(3) such candidate and the authorized commit-
14 tees of such candidate will accept and expend or retain
15 contributions to defray qualified campaign expenses
16 only to the extent that the qualified campaign expenses
17 incurred by such candidate and the authorized commit-
18 tees of such candidate certified to under paragraph (2)
19 exceed the aggregate payments received by such candi-
20 date out of the fund pursuant to section 506.

21 “(d) Certification for payment to a candidate shall be
22 made by the Commission within 5 days after the date the
23 Commission receives a certification from such candidate, pur-
24 suant to this section. Such certification shall be in such form

1 and filed as the Commission shall prescribe by rule or regula-
2 tion.

3 “(e)(1) To be eligible to receive any payment under this
4 subchapter, a candidate shall certify to the Commission,
5 under penalty of perjury, that such candidate will not know-
6 ingly make expenditures from his or her personal funds, or
7 the personal funds of his or her immediate family in connec-
8 tion with such candidate’s campaign for election in excess of,
9 in the aggregate, \$20,000.

10 “(2) For purposes of this subchapter, the term ‘immedi-
11 ate family’ means the spouse, any child, parent, grandparent,
12 brother, halfbrother, sister, or halfsister of the candidate, and
13 the spouses of such persons.

14 “(f) If an individual ceases to be a candidate such indi-
15 vidual—

16 “(1) shall no longer be eligible to receive any pay-
17 ments under this subchapter, except that such individ-
18 ual shall be eligible to receive payments to defray
19 qualified campaign expenses incurred while such person
20 was an eligible candidate actively seeking election to
21 the Senate; and

22 “(2) shall pay to the Secretary, as soon as practi-
23 cable after the date upon which such individual ceases
24 to be a candidate, an amount equal to the amount of
25 payments received by such individual under this sub-

1 chapter if such payments are not used to defray quali-
2 fied campaign expenses.

3 "ENTITLEMENT OF ELIGIBLE CANDIDATES TO MATCHING
4 PAYMENTS

5 "SEC. 503. (a) Subject to the provisions of this chap-
6 ter—

7 "(1) each eligible candidate of a major party in an
8 election shall be entitled to equal amounts under this
9 subchapter in an amount which, in the aggregate, shall
10 not exceed 50 percent of the expenditure limit applica-
11 ble to such candidate based on this formula—

12 "(A) in each State with a voting-age popula-
13 tion of 1,000,000 or less: \$500,000";

14 "(B) in each State with a voting-age popula-
15 tion greater than 1,000,000 but less than
16 3,000,000: an amount equal to 50 cents times
17 such voting-age population; and

18 "(C) in each State with a voting-age popula-
19 tion of 3,000,000 or over: an amount equal to 30
20 cents times such voting-age population, but not
21 less than \$1,500,000.

22 "(2) Subject to section 502(b), any eligible candi-
23 date of a major party shall be entitled to—

24 "(A) an initial payment under section 507 of
25 \$20,000; and

1 “(B) additional matching payments equal to
2 the amount of contributions received, to be paid in
3 multiples of \$10,000 under section 507, if, with
4 respect to each such payment, the eligible candi-
5 date and his authorized committees have received
6 contributions aggregating \$10,000, which have
7 not been matched under this section, up to the
8 maximum amount set forth in section 503(a).

9 “(3) An eligible candidate of a minor party in an
10 election shall be entitled to a payment under this sub-
11 chapter equal in the aggregate to an amount which
12 bears the same ratio to the amount allowed under
13 paragraph (1) for a major party as the number of popu-
14 lar votes received by the candidate for Senator of the
15 minor party, as such candidate, in the preceding elec-
16 tion bears to the average number of popular votes re-
17 ceived by the candidates for Senator of the major par-
18 ties in the preceding election.

19 “(4) An eligible candidate, other than a candidate
20 of a major or minor party, who receives 5 percent or
21 more of the total number of popular votes cast for the
22 office of United States Senate in such election shall be
23 entitled to payments pursuant to this subchapter equal
24 in the aggregate to an amount which bears the same
25 ratio to the amount allowed under paragraph (1) for a

1 major party as the number of popular votes received by
2 such candidate in such election bears to the average
3 number of popular votes received in such election by
4 the candidates for Senator of the major parties. All
5 such payments shall be made at such time after the
6 election as the Commission determines the amount of
7 payments such candidate is eligible for pursuant to this
8 subparagraph. The Commission shall certify such
9 amount to the United States Treasury for payment.

10 “(b) The aggregate payments to which an eligible candi-
11 date shall be entitled under paragraph (3) or (4) of subsection
12 (a), shall not exceed an amount equal to the lesser of—

13 “(1) the amount of qualified campaign expenses
14 incurred by an eligible candidate and the authorized
15 committees of such candidate, reduced by the amount
16 of contributions allowed to defray qualified campaign
17 expenses received and expended or retained by an eli-
18 gible candidate and such committees, or

19 “(2) the aggregate payments to which an eligible
20 candidate of a major party is entitled under subsection
21 (a)(1), reduced by the amount of contributions described
22 in paragraph (1) of this subsection.

23 “(c) An eligible candidate shall be entitled to payments
24 only—

1 “(1) to defray qualified campaign expenses in-
2 curred by an eligible candidate or the authorized com-
3 mittees of such candidate, or

4 “(2) to repay loans the proceeds of which were
5 used to defray such qualified campaign expenses, or
6 otherwise to restore funds (other than contributions to
7 defray qualified campaign expenses received and ex-
8 pended by such candidate or such committees) used to
9 defray such qualified campaign expenses.

10 “ADDITIONAL ENTITLEMENT OF OPPONENTS OF NONPUB-
11 LICLY FINANCED CANDIDATES; MATCHING OF INDE-
12 PENDENT EXPENDITURES

13 “SEC. 504. (a) Within 5 days after nomination by a
14 major or minor party, and under such regulations as the
15 Commission may prescribe, each candidate nominated by a
16 major or minor party shall notify the Commission in writing
17 of his or her intention to accept or not accept the funds to
18 which he or she is entitled under section 503.

19 “(b)(1) A candidate of a major party who has elected to
20 accept the funds for which he or she has qualified under sec-
21 tion 503 and who is opposed by a major party candidate who
22 has elected not to accept public funding shall be entitled to
23 receive additional funds from the general fund of the United
24 States Treasury, pursuant to paragraph (2).

25 “(2)(A) Subject to the provisions of subparagraph (B), a
26 major party candidate eligible to receive funds pursuant to

1 paragraph (1), shall receive additional funds in the amount of
2 one dollar for every dollar of contributions or expenditures
3 raised, incurred, or expended by the candidate not accepting
4 funding.

5 “(B) Such additional funds shall only match those con-
6 tributions or expenditures raised, incurred, or expended by
7 the candidate not accepting funding which are in excess of
8 the entitlement of such eligible candidate.

9 “(c) For purposes of implementing subsection (b), a can-
10 didate who elects not to accept public funding shall report his
11 or her receipts and expenditures to the Commission—

12 “(1) monthly for contributions or expenditures re-
13 ceived, incurred, or expended prior to 60 days prior to
14 the date of the election;

15 “(2) weekly for contributions or expenditures re-
16 ceived, incurred, or expended from 59 to 11 days prior
17 to the date of the election; and

18 “(3) daily for contributions or expenditures re-
19 ceived, incurred, or expended during the 10 days prior
20 to the date of the election.

21 “(d) Notwithstanding the provisions of section 505—

22 “(1) if a major party candidate is eligible, pursu-
23 ant to subsection (b), to receive additional funding be-
24 cause of contributions or expenditures received, in-
25 curred, or expended by such opponent between the

1 date 59 days prior to the date of the election and the
2 date of the election which are required to be reported
3 by paragraph (2) or (3) of subsection (c), and

4 "(2) such eligible candidate files a request with
5 the Commission stating that such candidate is eligible
6 to receive such additional funds,

7 the Commission, within 24 hours after such request is filed,
8 shall certify to the Secretary of the Treasury for payments to
9 such eligible candidate.

10 "(e)(1) If, with respect to an election, a total of more
11 than \$2,000 in independent expenditures is made in opposi-
12 tion to, or on behalf of an opponent of, a candidate who is
13 eligible to receive payments under section 502, such candi-
14 date shall receive additional payments equal to such total, but
15 such payments shall not duplicate payments under subsection
16 (b)(2)(A).

17 "(2)(A) Any person who makes independent expendi-
18 tures shall notify the Commission and each candidate in the
19 election not later than 48 hours after such independent ex-
20 penditures total more than \$2,000 and thereafter shall make
21 such notification each time such person's additional independ-
22 ent expenditures total \$1,000 or more.

23 "(B) No independent expenditure may be made unless
24 such expenditure is reported as provided in subparagraph (A)
25 at least 10 days before the date of the election.

1 "CERTIFICATION BY COMMISSION

2 "SEC. 505. (a) No later than 48 hours after a candidate
3 files a request with the Commission to receive payments
4 under section 503 or 504, the Commission shall certify such
5 eligibility to the Secretary of the Treasury (hereinafter in this
6 title referred to as the 'Secretary') for payment in full of the
7 amount to which such candidate is entitled. The request re-
8 ferred to in the preceding sentence shall contain—

9 "(1) such information, and be made in accordance
10 with such procedures, as the Commission may provide
11 by regulation; and

12 "(2) a verification signed by the candidate and the
13 treasurer of the principal campaign committee of such
14 candidate stating that the information furnished in sup-
15 port of the request, to the best of their knowledge, is
16 correct and fully satisfies the requirements of this title.

17 "(b) Initial certifications by the Commission under sub-
18 section (a) and all determinations made by the Commission
19 under this title, shall be final and conclusive, except to the
20 extent that they are subject to examination and audit by the
21 Commission under section 508 and judicial review under sec-
22 tion 510.

23 "ESTABLISHMENT OF ACCOUNT; PAYMENTS TO ELIGIBLE

24 CANDIDATES

25 "SEC. 506. (a) The Secretary shall maintain in the
26 Presidential Election Campaign Fund established by para-

1 graph 9006(a) of the Internal Revenue Code of 1954, in ad-
2 dition to any accounts maintained under such section, a sepa-
3 rate account to be known as the 'Senate General Election
4 Campaign Fund'. The Secretary shall deposit into such fund,
5 for use by a candidate eligible for payments under this sub-
6 chapter, the amount available after the Secretary determines
7 that amounts in the fund necessary for payments under sub-
8 title H of the Internal Revenue Code of 1954 are adequate.
9 The moneys designated for such account shall remain avail-
10 able without fiscal year limitation.

11 “(b) Upon receipt of a certification from the Commission
12 under section 505, the Secretary shall promptly pay to the
13 candidate, out of the fund, the amount certified by the Com-
14 mission. Amounts paid to any such candidate shall be under
15 the control of such candidate.

16 “(c) If at the time of a certification by the Commission
17 under section 505 for payment to an eligible candidate, the
18 Secretary determines that the moneys in the fund are not, or
19 may not be, sufficient to satisfy the full entitlement of such
20 eligible candidate, he shall withhold from such payment such
21 amount as he determines to be necessary to assure that an
22 eligible candidate will receive his or her pro rata share of his
23 or her full entitlement. Amounts so withheld shall be paid
24 when the Secretary determines that there are sufficient
25 moneys in the fund to pay such amounts, or portions thereof,

1 to all eligible candidates from whom amounts have been
2 withheld, but, if there are not sufficient moneys in the fund to
3 satisfy the full entitlement of an eligible candidate, the
4 amounts so withheld shall be paid in such manner that each
5 eligible candidate receives his or her pro rata share of his or
6 her full entitlement.

7 "EXAMINATIONS AND AUDITS; REPAYMENTS

8 "SEC. 507. (a) Notwithstanding the provisions of section
9 311(b), after each election, the Commission shall conduct a
10 thorough examination and audit of the qualified campaign ex-
11 penses of each candidate for the United States Senate who
12 received payments under this subchapter.

13 "(b)(1) If the Commission determines that any portion of
14 the payments made to a candidate under this subchapter was
15 in excess of the aggregate payments to which such candidate
16 was entitled, it shall so notify such candidate, and such candi-
17 date shall pay to the Secretary an amount equal to the
18 excess.

19 "(2) If the Commission determines that a candidate or
20 any authorized committee of such candidate incurred quali-
21 fied campaign expenses in excess of the aggregate payments
22 to which the candidate was entitled under section 503, it
23 shall notify such candidate of the amount of such excess and
24 such candidate shall pay to the Secretary an amount equal to
25 such amount.

1 “(3) If the Commission determines that a candidate or
2 any authorized committee of such candidate accepted contri-
3 butions, other than contributions to make up deficiencies in
4 payments out of the fund because of the application of section
5 506(c) to defray qualified campaign expenses, other than
6 qualified campaign expenses with respect to which payment
7 is required under paragraph (2), it shall notify such candidate
8 of the amount of the contributions so accepted, and such can-
9 didate shall pay to the Secretary an amount equal to such
10 amount.

11 “(4) If the Commission determines that any amount of
12 any payment made to a candidate under section 506 was
13 used for any purpose other than—

14 “(A) to defray the qualified campaign expenses
15 with respect to which such payment was made, or

16 “(B) to repay loans the proceeds of which were
17 used to defray qualified campaign expenses,

18 it shall notify such candidate of the amount so used, and such
19 candidate shall pay to the Secretary an amount equal to such
20 amount.

21 “(5) No payment shall be required from a candidate
22 under this subsection to the extent that such payment, when
23 added to other payments required from such candidate under
24 this subsection, exceeds the amount of payments received by
25 such candidate under this subchapter.

1 “(c) No notification shall be made by the Commission
2 under subsection (b) with respect to an election more than 3
3 years after the date of such election.

4 “(d) All payments received by the Secretary under sub-
5 section (b) shall be deposited in the Senate General Election
6 Campaign Fund established in section 506.

7 “CRIMINAL PENALTIES

8 “SEC. 508. (a)(1) It shall be unlawful for an eligible
9 candidate of a political party in an election or for any author-
10 ized committee of such candidate to knowingly and willfully
11 incur qualified campaign expenses in excess of the aggregate
12 payments to which an eligible candidate of a major party is
13 entitled with respect to such election.

14 “(2) Any person who violates paragraph (1) shall be
15 fined not more than \$5,000, or imprisoned not more than one
16 year, or both. In the case of a violation by any authorized
17 committee, any officer or member of such committee who
18 knowingly and willfully consents to such violation shall be
19 fined not more than \$5,000, or imprisoned not more than one
20 year, or both.

21 “(b)(1) It shall be unlawful for an eligible candidate of a
22 major party in an election or for any authorized committee of
23 such candidate to knowingly and willfully accept any contri-
24 bution to defray qualified campaign expenses, except to the
25 extent necessary to make up any deficiency in payments re-
26 ceived out of the fund because of the application of section

1 506 or to defray expenses which would be qualified campaign
2 expenses but for subparagraph (C) of section 501(10).

3 “(2) It shall be unlawful for an eligible candidate of a
4 political party (other than an eligible candidate of a major
5 party) in an election or for any authorized committee of such
6 candidate to knowingly and willfully accept and expend or
7 retain contributions to defray qualified campaign expenses in
8 an amount which exceeds the qualified campaign expenses
9 incurred with respect to such election by such eligible candi-
10 date and an authorized committee of such candidate.

11 “(3) Any person who violates paragraph (1) or (2) shall
12 be fined not more than \$5,000, or imprisoned not more than
13 one year, or both. In the case of a violation by any author-
14 ized committee, any officer or member of such committee
15 who knowingly and willfully consents to such violation shall
16 be fined not more than \$5,000, or imprisoned not more than
17 one year, or both.

18 “(c)(1) It shall be unlawful for any person who receives
19 any payment under section 506, or to whom any portion of
20 any payment received under such section is transferred,
21 knowingly and willfully to use, or authorize the use of, such
22 payment or such portion for any purpose other than—

23 “(A) to defray the qualified campaign expenses
24 with respect to which such payment was made, or

1 “(B) to repay loans the proceeds of which were
2 used, or otherwise to restore funds (other than contri-
3 butions to defray qualified campaign expenses which
4 were received and expended) which were used, to
5 defray such qualified campaign expenses.

6 “(2) Any person who violates paragraph (1) shall be
7 fined not more than \$10,000, or imprisoned not more than
8 five years, or both.

9 “(d)(1) It shall be unlawful for any person knowingly
10 and willfully—

11 “(A) to furnish any false, fictitious, or fraudulent
12 evidence, books, or information to the Commission
13 under this subchapter, or to include in any evidence,
14 books, or information so furnished any misrepresenta-
15 tion of a material fact, or to falsify or conceal any evi-
16 dence, books, or information relevant to a certification
17 by the Commission or an examination and audit by the
18 Commission under this subchapter; or

19 “(B) to fail to furnish to the Commission any
20 records, books, or information requested by it for pur-
21 poses of this subchapter.

22 “(2) Any person who violates paragraph (1) shall be
23 fined not more than \$10,000, or imprisoned not more than
24 five years, or both.

1 “(e)(1) It shall be unlawful for any person knowingly
2 and willfully to give or accept any kickback or any illegal
3 payment in connection with any qualified campaign expense
4 of an eligible candidate or any authorized committee of such
5 candidate.

6 “(2) Any person who violates paragraph (1) shall be
7 fined not more than \$10,000, or imprisoned not more than
8 five years, or both.

9 “(3) In addition to the penalty provided by paragraph
10 (2), any person who accepts any kickback or illegal payment
11 in connection with any qualified campaign expense of an eli-
12 gible candidate or any authorized committee of such candi-
13 date shall pay to the Secretary of the Treasury, for deposit in
14 the general fund of the Treasury, an amount equal to 125
15 percent of the kickback or payment received.

16 “(f)(1) It shall be unlawful for any individual to disclose
17 any information obtained under the provisions of this sub-
18 chapter except as may be required by law.

19 “(2) Any person who violates paragraph (1) shall be
20 fined not more than \$5,000, or imprisoned not more than one
21 year, or both.

22 “REPORTS TO CONGRESS; REGULATIONS

23 “SEC. 509. (a) The Commission shall, as soon as practi-
24 cable after each election, but not to exceed 6 months, submit
25 a full report to the Senate setting forth—

1 “(1) the qualified campaign expenses (shown in
2 such detail as the Commission determines necessary)
3 incurred by a candidate and the authorized committees
4 of such candidate;

5 “(2) the amounts certified by it under section 505
6 for payment to each eligible candidate;

7 “(3) the amount of payments, if any, required
8 from such candidate under section 507, and the rea-
9 sons for each payment required; and

10 “(4) the balance in (A) the Presidential Election
11 Campaign Fund, and (B) each account maintained in
12 such fund, at the end of such calendar year.

13 Each report submitted pursuant to this section shall be print-
14 ed as a Senate document.

15 “(b) The Commission is authorized to prescribe such
16 rules and regulations in accordance with the provisions of
17 subsection (c), to conduct such examinations and audits (in
18 addition to the examinations and audits required by section
19 507), to conduct such investigations, and to require the keep-
20 ing and submission of such books, records, and information,
21 as it deems necessary to carry out the functions and duties
22 imposed on it by this subchapter.

23 “(c) Thirty days before prescribing any rule or regula-
24 tion under subsection (b), the Commission shall transmit a
25 statement with respect to such rule or regulation to the

1 Senate, setting forth the proposed rule or regulation. The
2 statement shall contain a detailed explanation and justifica-
3 tion of such rule or regulation.

4 "PARTICIPATION BY COMMISSION IN JUDICIAL
5 PROCEEDINGS

6 "SEC. 510. (a) The Commission is authorized to appear
7 in and defend against any action filed under section 511,
8 either by attorneys employed in its office or by counsel whom
9 it may appoint without regard to the provisions of title 5,
10 United States Code, governing appointments in the competi-
11 tive service, and whose compensation it may fix without
12 regard to provisions of chapter 51 and subchapter III of
13 chapter 53 of such title.

14 "(b) The Commission is authorized to appear, through
15 attorneys and counsel described in subsection (a), in the dis-
16 trict courts and other appropriate courts of the United States
17 to seek recovery of any amounts determined to be payable to
18 the Secretary of the Treasury as a result of any examination
19 and audit made pursuant to section 507.

20 "(c) The Commission is authorized to petition the courts
21 of the United States for declaratory or injunctive relief con-
22 cerning any civil matter arising under this subchapter,
23 through attorneys and counsel described in subsection (a).
24 Upon application of the Commission, an action brought pur-
25 suant to this subsection shall be heard and determined by a
26 court of three judges in accordance with the provisions of

1 section 2284 of title 28, United States Code, and any appeal
2 from the determination of such court shall lie to the Supreme
3 Court of the United States. Judges designated to hear the
4 case shall assign the case for hearing at the earliest practica-
5 ble date, participate in the hearing and determination thereof,
6 and cause the case to be in every way expedited.

7 “(d) The Commission is authorized on behalf of the
8 United States to appeal from, and to petition the Supreme
9 Court of the United States for certiorari to review judgments
10 or decrees entered with respect to actions in which it appears
11 pursuant to the authority provided in this section.

12 “JUDICIAL REVIEW

13 “SEC. 511. (a) Any certification, determination, or other
14 action by the Commission made or taken pursuant to the pro-
15 visions of this subchapter shall be subject to review by the
16 United States Court of Appeals for the District of Columbia
17 Circuit upon petition filed in such court by any interested
18 person. Any petition filed pursuant to this section shall be
19 filed within thirty days after such certification, determination,
20 or other action by the Commission.

21 “(b)(1) The Commission, the national committee of any
22 political party, or any individual eligible to vote for a candi-
23 date is authorized to institute an action under this section,
24 including an action for declaratory judgment or injunctive
25 relief, as may be appropriate to implement or construe any
26 provision of this subchapter.

1 “(2) The district courts of the United States shall have
2 jurisdiction of proceedings instituted pursuant to this subsec-
3 tion and shall exercise such jurisdiction without regard to
4 whether a person asserting rights under the provisions of this
5 subsection has exhausted administrative or other remedies
6 provided by law. Such proceedings shall be heard and deter-
7 mined by a court of three judges in accordance with the pro-
8 visions of section 2284 of title 28, United States Code, and
9 any appeal shall lie to the Supreme Court of the United
10 States. Judges designated to hear the case shall assign the
11 case for hearing at the earliest practicable date, participate in
12 the hearing and determination thereof, and cause the case to
13 be in every way expedited.”.

14 SEC. 4. (a) Section 315(c) of the Federal Election Cam-
15 paign Act of 1971 is amended by striking out “subsection (b)
16 of this section and subsection (d) of this section” and inserting
17 in lieu thereof “subsections (b) and (d) of this section and
18 subsection (a) of section 503”.

19 (b) Section 315(c)(2)(B) of the Federal Election Cam-
20 paign Act of 1971 is amended by inserting before the period
21 at the end thereof the following: “, except that with respect
22 to the limitations established by subchapter III of this Act,
23 the term ‘base period’ means the calendar year 1987”.

1 SEC. 5. This Act and the amendments made by this Act
2 shall become effective on January 1, 1989, and shall apply to
3 campaigns for election to the Senate after such date.

4 AUTHORIZATION OF APPROPRIATIONS

5 SEC. 6. There are authorized to be appropriated to the
6 Commission, for the purpose of carrying out its functions
7 under this Act, such sums as may be necessary.

○

100TH CONGRESS
1ST SESSION

S. 179

To amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. SIMON (for himself and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. This Act may be cited as the "Senatorial
4 Election Campaign Act".

5 SEC. 2. The Federal Election Campaign Act of 1971 is
6 amended by adding at the end thereof the following new title:

7 "TITLE V—PUBLIC FINANCING OF SENATE
8 GENERAL ELECTION CAMPAIGNS

9 "DEFINITIONS

10 "SEC. 501. (a) For purposes of this title—

1 “(1) unless otherwise provided in this title, the
2 definitions set forth in section 301 of this Act apply to
3 this title;

4 “(2) ‘authorized committee’ means, with respect
5 to any candidate for election to the United States
6 Senate, any political committee which is authorized in
7 writing by such candidate to accept contributions, incur
8 expenses, or make expenditures on behalf of such can-
9 didate to further the election of such candidate;

10 “(3) ‘candidate’ means an individual who has been
11 nominated for election to the office of United States
12 Senator by a major or minor party or who has qualified
13 to have his or her name on the general election ballot;

14 “(4) ‘eligible candidate’ means a candidate who is
15 eligible, under section 502, for payments under this
16 title;

17 “(5) ‘expenditure report period’ with respect to an
18 election means—

19 “(A) in the case of a major party candidate,
20 the period beginning on the date such candidate
21 becomes an eligible candidate and ending 30 days
22 after the date of the election or the date such can-
23 didate is no longer an eligible candidate, whichev-
24 er date is earlier; or

1 “(B) in the case of a candidate other than a
2 candidate of a major party, the same period as the
3 expenditure report period of the major party
4 which has the shortest expenditure report period
5 for such election;

6 “(6) ‘election’ means any regularly scheduled gen-
7 eral, special, or runoff election, other than a primary
8 election, held to elect a candidate to the United States
9 Senate;

10 “(7) ‘fund’ means the Senate General Election
11 Campaign Fund maintained, pursuant to section 506,
12 by the Secretary of the Treasury in the Presidential
13 Election Campaign Fund established by section
14 9006(a) of the Internal Revenue Code of 1986;

15 “(8) ‘major party’ means with respect to any elec-
16 tion, a political party whose candidate for the office of
17 United States Senator in any of the three preceding
18 elections received, as the candidate of such party, 25
19 percent or more of the total number of popular votes
20 received by all candidates for such office;

21 “(9) ‘minor party’ means with respect to any elec-
22 tion, a political party whose candidate for the office of
23 Senator in any of the three preceding elections re-
24 ceived, as the candidate of such party, 5 percent or

1 more, but less than 25 percent of the total number of
2 popular votes received by all candidates for such office;

3 “(10) the term ‘qualified campaign expense’
4 means an expense—

5 “(A) incurred by the candidate or the author-
6 ized committee of the candidate for the office of
7 United States Senator to further his or her elec-
8 tion to such office,

9 “(B) incurred within the expenditure report
10 period, or incurred before the beginning of such
11 period to the extent such expense is for property,
12 services, or facilities used, or available for use,
13 during such period, and

14 “(C) neither the incurring nor paying of
15 which constitutes a violation of any law of the
16 United States or of the State in which such ex-
17 pense is incurred or paid.

18 “(b) The written authorization provided for in subsection
19 (a)(2) shall be addressed to the chairman of the political com-
20 mittee, and a copy of such authorization shall be filed by each
21 candidate with the Commission. A withdrawal of any author-
22 ization shall be in writing and shall be addressed and filed in
23 the same manner as the authorization.

1 "CONDITION FOR ELIGIBILITY FOR PAYMENTS

2 "SEC. 502. (a) In order to be eligible to receive any
3 payments under this title, the candidate shall agree, in writ-
4 ing—

5 "(1) to obtain and furnish to the Commission such
6 evidence as it may request of the qualified campaign
7 expenses and contributions of such candidate,

8 "(2) to keep and furnish to the Commission such
9 records, books, and other information as it may re-
10 quest, and

11 "(3) to an audit and examination by the Commis-
12 sion under section 507 and to pay or repay any
13 amounts required under such section.

14 "(b) To be eligible to receive payments under section
15 503, the candidate of a major party shall certify to the Com-
16 mission, under penalty of perjury, that—

17 "(1) such candidate is seeking election to the
18 United States Senate and such candidate and at least
19 one other major party or minor party candidate have
20 qualified for the election ballot under the law of the
21 State involved,

22 "(2) such candidate and the authorized commit-
23 tees of such candidate will not incur qualified campaign
24 expenses in excess of the limitation on expenditures

6

1 provided in section 315(j), unless otherwise provided in
2 this title,

3 “(3) such candidate and the authorized commit-
4 tees of such candidate have received contributions only
5 from individuals—

6 “(A) in a total amount of not less than the
7 lesser of \$250,000 or 20 percent of the overall
8 limitation on expenditures, as determined under
9 section 315(j), with respect to that campaign;

10 “(B) in amounts which when added to the
11 total amount contributed by such individual for
12 such election, does not exceed \$250; and

13 “(C) at least 80 percent of whom are resi-
14 dents of the State in which such candidate is
15 seeking election,

16 “(4) no contributions to defray qualified campaign
17 expenses have been or will be accepted by such candi-
18 date or any of the authorized committees of such can-
19 didate except to the extent necessary to—

20 “(A) meet the requirements of paragraph (3);
21 or

22 “(B) make up any deficiency in payments re-
23 ceived out of the fund because of the application
24 of section 506(c), and

1 “(5) no contributions have been or will be accept-
2 ed by such candidate or any authorized committees of
3 such candidate to defray expenses which are not quali-
4 fied campaign expenses.

5 “(c) In order to be eligible to receive any payments
6 under this title, a candidate other than a candidate of a major
7 party shall certify to the Commission under penalty of perju-
8 ry, that—

9 “(1) such candidate is seeking election to the
10 United States Senate and such candidate and at least
11 one candidate of a major party have qualified for the
12 election ballot under the law of the State involved,

13 “(2) such candidate and the authorized commit-
14 tees of such candidate will not incur qualified campaign
15 expenses in excess of the aggregate payments to which
16 an eligible candidate of a major party is entitled under
17 section 503, unless otherwise provided in this title,

18 “(3) such candidate and the authorized commit-
19 tees of such candidate have received contributions only
20 from individuals—

21 “(A) in a total amount of not less than the
22 lesser of \$250,000 or 20 percent of the overall
23 limitation on expenditures, as determined under
24 section 315(j), with respect to that campaign;

1 “(B) in amounts which when added to the
2 total amount contributed by each such individual
3 for such election, does not exceed \$250; and

4 “(C) at least 80 percent of whom are resi-
5 dents of the State in which such candidate is
6 seeking election,

7 “(4) such candidate and the authorized commit-
8 tees of such candidate will accept and expend or retain
9 contributions to defray qualified campaign expenses
10 only to the extent—

11 “(A) necessary to meet the contribution
12 threshold requirements provided in paragraph (3);
13 or

14 “(B) the qualified campaign expenses in-
15 curred by such candidate and the authorized com-
16 mittees of such candidate certified to under para-
17 graph (2) exceed the aggregate payments received
18 by such candidate out of the fund pursuant to sec-
19 tion 506.

20 “(d) Certification for payment to a candidate shall be
21 made by the Commission within 5 days after the date the
22 Commission receives a certification from such candidate, pur-
23 suant to this section. Such certification shall be in such form
24 and filed in such manner as the Commission shall prescribe
25 by rule or regulation.

1 “(e)(1) To be eligible to receive any payment under this
2 title, a candidate shall certify to the Commission, under pen-
3 alty of perjury, that such candidate will not knowingly make
4 expenditures from his or her personal funds, or the personal
5 funds of his or her immediate family in connection with such
6 candidate's campaign for election in excess of, in the aggre-
7 gate, \$20,000.

8 “(2) For purposes of this title, the term ‘immediate
9 family’ means the spouse, any child, parent, grandparent,
10 brother, halfbrother, sister, or halfsister of the candidate, and
11 the spouses of such persons.

12 “(f) If an individual ceases to be a candidate such indi-
13 vidual—

14 “(1) shall no longer be eligible to receive any pay-
15 ments under this title, except that such individual shall
16 be eligible to receive payments to defray qualified cam-
17 paign expenses incurred while such person was an eli-
18 gible candidate actively seeking election to the Senate;
19 and

20 “(2) shall pay to the Secretary, as soon as practi-
21 cable after the date upon which such individual ceases
22 to be a candidate, an amount equal to the amount of
23 payments received by such individual under this title if
24 such payments are not used to defray qualified cam-
25 paign expenses.

1 "ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS

2 "SEC. 503. (a)(1)(A) Subject to the provisions of this
3 Act, each eligible candidate of a major party in an election
4 shall be entitled to payments under this title which, in the
5 aggregate, and after being reduced by the amount determined
6 under subparagraph (B), shall be an amount which shall not
7 exceed—

8 "(i) \$500,000 in each State with a voting age
9 population of 1,000,000 or less;

10 "(ii) an amount equal to \$.50 multiplied by the
11 voting age population in each State with a voting age
12 population greater than 1,000,000 but less than
13 3,000,000; and

14 "(iii) an amount equal to \$.30 multiplied by the
15 voting age population, but not less than \$1,500,000 in
16 each State with a voting age population of 3,000,000
17 or over.

18 "(B) The amount of the reduction referred to in sub-
19 paragraph (A) for any eligible candidate is an amount equal
20 to the sum of—

21 "(i) the contributions received by the eligible can-
22 didate, plus

23 "(ii) the aggregate costs of all property, services,
24 and facilities used by, or available for the use of, the

1 eligible candidate during the expenditure report period
2 that were incurred before the beginning of such period.

3 “(2)(A) Unless the expenditure or contribution limits are
4 made inapplicable pursuant to section 504, the amount a can-
5 didate receives pursuant to this section, when added to the
6 contribution threshold requirements of subsections (b)(3) and
7 (c)(3) of section 502 shall not exceed the limitation on ex-
8 penditures provided in section 315(j).

9 “(B) An eligible candidate of a minor party in an elec-
10 tion shall be entitled to a payment under this title equal in
11 the aggregate to an amount which bears the same ratio to the
12 amount allowed under paragraph (1) for a major party as the
13 number of popular votes received by the candidate for Sena-
14 tor of the minor party, as such candidate, in the preceding
15 election bears to the average number of popular votes re-
16 ceived by the candidates for Senator of the major parties in
17 the preceding election.

18 “(C) An eligible candidate, other than a candidate of a
19 major or minor party, who receives 5 percent or more of the
20 total number of popular votes cast for the office of United
21 States Senate in such election shall be entitled to payments
22 pursuant to this title equal in the aggregate to an amount
23 which bears the same ratio to the amount allowed under
24 paragraph (1) for a major party as the number of popular
25 votes received by such candidate in such election bears to the

1 average number of popular votes received in such election by
2 the candidates for Senator of the major parties.

3 “(3) All payments received pursuant to paragraph (2)(C)
4 shall be made at such time after the election as the Commis-
5 sion determines in the amount of payments such candidate is
6 eligible for pursuant to this subparagraph. The Commission
7 shall certify such amount to the United States Treasury for
8 payment.

9 “(b) The aggregate payments to which an eligible candi-
10 date shall be entitled under paragraph (2)(B) or (2)(C) of sub-
11 section (a), shall not exceed an amount equal to the lesser
12 of—

13 “(1) the amount of qualified campaign expenses
14 incurred by an eligible candidate and the authorized
15 committees of such candidate, reduced by the amount
16 of contributions allowed to meet the requirements of
17 subsection (b)(3) or (c)(3) of section 502, or, to defray
18 qualified campaign expenses by an eligible candidate
19 and such committees, or

20 “(2) the aggregate payments to which an eligible
21 candidate of a major party is entitled under subsection
22 (a)(1), reduced by the amount of contributions described
23 in paragraph (1) of this subsection.

24 “(c) An eligible candidate shall be entitled to payments
25 only—

1 “(1) to defray qualified campaign expenses in-
2 curred by an eligible candidate or the authorized com-
3 mittees of such candidate, or

4 “(2) to repay loans the proceeds of which were
5 used to defray such qualified campaign expenses, or
6 otherwise to restore funds (other than contributions to
7 defray qualified campaign expenses received and ex-
8 pended by such candidate or such committees) used to
9 defray such qualified campaign expenses.

10 “ADDITIONAL ENTITLEMENT OF OPPONENTS OF
11 NONPUBLICLY FINANCED CANDIDATES

12 “SEC. 504. (a) Within 5 days after nomination by a
13 major or minor party, and under such regulations as the
14 Commission may prescribe, each candidate nominated by a
15 major or minor party shall notify the Commission in writing
16 of his or her intention to accept or not accept the funds to
17 which he or she is entitled under section 503.

18 “(b)(1) A candidate of a major party who has elected to
19 accept the funds for which he or she has qualified under sec-
20 tion 503 and who is opposed by a major party candidate who
21 has elected not to accept public funding shall be entitled to
22 receive additional funds from the general fund of the United
23 States Treasury, pursuant to paragraph (2).

24 “(2)(A) Subject to the provisions of subparagraph (B), a
25 major party candidate eligible to receive funds pursuant to
26 paragraph (1), shall receive additional funds in the amount of

1 one dollar for every dollar of contributions or expenditures
2 raised, incurred, or expended by the candidate not accepting
3 funding.

4 “(B) Such additional funds shall only match those con-
5 tributions or expenditures raised, incurred, or expended by
6 the candidate not accepting funding which are in excess of
7 the expenditure limit of such eligible candidate.

8 “(c) For purposes of implementing subsection (b), a can-
9 didate who elects not to accept public funding shall report his
10 or her receipts and expenditures to the Commission—

11 “(1) monthly for contributions or expenditures re-
12 ceived, incurred, or expended prior to 60 days prior to
13 the date of the election;

14 “(2) weekly for contributions or expenditures re-
15 ceived, incurred, or expended from the period begin-
16 ning 59 days prior to the date of the election and
17 ending on the date 11 days prior to the date of the
18 election; and

19 “(3) daily for contributions or expenditures re-
20 ceived, incurred, or expended during the 10 days prior
21 to the date of the election.

22 “(d) Notwithstanding the provisions of section 505—

23 “(1) if a major party candidate is eligible, pursu-
24 ant to subsection (b), to receive additional funding be-
25 cause of contributions or expenditures received, in-

1 curred, or expended by such opponent between the
2 date 59 days prior to the date of the election and the
3 date of the election which are required to be reported
4 by paragraph (2) or (3) of subsection (c), and

5 “(2) such eligible candidate files a request with
6 the Commission stating that such candidate is eligible
7 to receive such additional funds,

8 the Commission, within 24 hours after such request is filed,
9 shall certify to the Secretary of the Treasury for payments to
10 such eligible candidate.

11 “CERTIFICATION BY COMMISSION

12 “SEC. 505. (a) Except as otherwise provided in section
13 504(d), not later than 5 days after a candidate files a request
14 with the Commission stating that he or she has met all appli-
15 cable conditions for eligibility to receive payments under this
16 title, the Commission shall certify to the Secretary of the
17 Treasury (hereafter in this title referred to as the ‘Secretary’)
18 for payment to such eligible candidate, full payment of
19 amounts to which such candidate is entitled under section
20 503, unless the provisions of section 506(c) apply.

21 “(b) Initial certifications by the Commission under sub-
22 section (a), and all determinations made by it under this chap-
23 ter shall be final and conclusive, except to the extent that
24 they are subject to examination and audit by the Commission
25 under section 507 and judicial review under section 511.

1 "PAYMENTS TO ELIGIBLE CANDIDATES

2 "SEC. 506. (a) The Secretary shall maintain in the
3 Presidential Election Campaign Fund established by para-
4 graph 9006(a) of the Internal Revenue Code of 1986, in ad-
5 dition to any accounts maintained under such section, a sepa-
6 rate account to be known as the 'Senate General Election
7 Campaign Fund'. The Secretary shall deposit into such fund,
8 for use by a candidate eligible for payments under this title,
9 the amount available after the Secretary determines that
10 amounts in the fund necessary for payments under subtitle H
11 of the Internal Revenue Code of 1954 are adequate. The
12 moneys designated for such account shall remain available
13 without fiscal year limitation.

14 "(b) Upon receipt of a certification from the Commission
15 under section 505, the Secretary shall promptly pay to the
16 candidate, out of the fund, the amount certified by the Com-
17 mission, unless the Secretary makes a determination pursu-
18 ant to subsection (c) that sufficient funds are not, or may not
19 be available. Amounts paid to any such candidate shall be
20 under the control of such candidate.

21 "(c) If at the time of a certification for payment by the
22 Commission under section 505, the Secretary determines
23 that the moneys in the fund are not, or may not be, sufficient
24 to satisfy the full entitlement of such eligible candidate, he
25 shall withhold from such payment such amount as he deter-

1 mines to be necessary to assure that an eligible candidate will
2 receive his or her pro rata share of his or her full entitlement.
3 Amounts so withheld shall be paid when the Secretary deter-
4 mines that there are sufficient moneys in the fund to pay such
5 amounts, or portions thereof, to all eligible candidates from
6 whom amounts have been withheld, but, if there are not suffi-
7 cient moneys in the fund to satisfy the full entitlement of an
8 eligible candidate, the amounts so withheld shall be paid in
9 such manner that each eligible candidate receives his or her
10 pro rata share of his or her full entitlement.

11 "EXAMINATIONS AND AUDITS; REPAYMENTS

12 "SEC. 507. (a) Notwithstanding the provisions of section
13 311(b), after each election, the Commission shall conduct a
14 thorough examination and audit of the qualified campaign ex-
15 penses of each candidate for the United States Senate who
16 received payments under this title.

17 "(b)(1) If the Commission determines that any portion of
18 the payments made to a candidate under this title was in
19 excess of the aggregate payments to which such candidate
20 was entitled, it shall so notify such candidate, and such candi-
21 date shall pay to the Secretary an amount equal to the
22 excess.

23 "(2) If the Commission determines that a candidate or
24 any authorized committee of such candidate incurred quali-
25 fied campaign expenses in excess of the limitation on expend-
26 itures, it shall notify such candidate of the amount of such

1 excess and such candidate shall pay to the Secretary an
2 amount equal to the amount of such excess.

3 “(3) If the Commission determines that a candidate or
4 any authorized committee of such candidate accepted contri-
5 butions, other than contributions to meet the eligibility re-
6 quirements of subsection (b)(3) or (c)(3) of section 502, or to
7 defray qualified campaign expenses allowed pursuant to sec-
8 tion 506(c), other than qualified campaign expenses with re-
9 spect to which payment is required under paragraph (2), it
10 shall notify such candidate of the amount of the contributions
11 so accepted, and such candidate shall pay to the Secretary an
12 amount equal to such amount.

13 “(4) If the Commission determines that any amount of
14 any payment made to a candidate under section 506 was
15 used for any purpose other than—

16 “(A) to defray the qualified campaign expenses
17 with respect to which such payment was made, or

18 “(B) to repay loans the proceeds of which were
19 used to defray qualified campaign expenses,

20 it shall notify such candidate of the amount so used, and such
21 candidate shall pay to the Secretary an amount equal to such
22 amount.

23 “(5) No payment shall be required from a candidate
24 under this subsection to the extent that such payment, when
25 added to other payments required from such candidate under

1 this subsection, exceeds the total amount of payments re-
2 ceived by such candidate under this title.

3 “(c) No notification shall be made by the Commission
4 under subsection (b) with respect to an election more than 3
5 years after the date of such election.

6 “(d) All payments received by the Secretary under sub-
7 section (b) shall be deposited in the Senate General Election
8 Campaign Fund established in section 506.

9 “CRIMINAL PENALTIES

10 “SEC. 508. (a)(1) It shall be unlawful for an eligible
11 candidate of a political party in an election or for any author-
12 ized committee of such candidate to knowingly and willfully
13 incur qualified campaign expenses in excess of the limitation
14 on expenditures applying to a candidate of a major party with
15 respect to such election.

16 “(2) Any person who violates paragraph (1) shall be
17 fined not more than \$5,000, or imprisoned not more than one
18 year, or both. In the case of a violation by any authorized
19 committee, any officer or member of such committee who
20 knowingly and willfully consents to such violation shall be
21 fined not more than \$5,000, or imprisoned not more than one
22 year, or both.

23 “(b)(1) It shall be unlawful for an eligible candidate of a
24 major party in an election or for any authorized committee of
25 such candidate to knowingly and willfully accept any contri-
26 bution to defray qualified campaign expenses, except to the

1 extent necessary to meet the threshold qualifications set forth
2 in subsection (b)(3) or (c)(3) of section 502, to make up any
3 deficiency in payments received because of the application of
4 section 506, or to defray expenses which would be qualified
5 campaign expenses but for subparagraph (C) of section
6 501(10).

7 “(2) It shall be unlawful for an eligible candidate of a
8 political party (other than an eligible candidate of a major
9 party) in an election, or for any authorized committee of such
10 candidate to knowingly and willfully accept and expend or
11 retain contributions to defray qualified campaign expenses in
12 an amount which exceeds the qualified campaign expenses
13 incurred with respect to such election by such eligible candi-
14 date and an authorized committee of such candidate.

15 “(3) Any person who violates paragraph (1) or (2) shall
16 be fined not more than \$5,000, or imprisoned not more than
17 one year, or both. In the case of a violation by any author-
18 ized committee, any officer or member of such committee
19 who knowingly and willfully consents to such violation shall
20 be fined not more than \$5,000, or imprisoned not more than
21 one year, or both.

22 “(c)(1) It shall be unlawful for any person who receives
23 any payment under section 506, or to whom any portion of
24 any payment received under such section is transferred,

1 knowingly and willfully to use, or authorize the use of, such
2 payment or such portion for any purpose other than—

3 “(A) to defray the qualified campaign expenses
4 with respect to which such payment was made, or

5 “(B) to repay loans the proceeds of which were
6 used, or otherwise to restore funds (other than contri-
7 butions to defray qualified campaign expenses which
8 were received and expended) which were used, to
9 defray such qualified campaign expenses.

10 “(2) Any person who violates paragraph (1) shall be
11 fined not more than \$10,000, or imprisoned not more than
12 five years, or both.

13 “(d)(1) It shall be unlawful for any person knowingly
14 and willfully—

15 “(A) to furnish any false, fictitious, or fraudulent
16 evidence, books, or information to the Commission
17 under this title, or to include in any evidence, books, or
18 information so furnished any misrepresentation of a
19 material fact, or to falsify or conceal any evidence,
20 books, or information relevant to a certification by the
21 Commission or an examination and audit by the Com-
22 mission under this title; or

23 “(B) to fail to furnish to the Commission any
24 records, books, or information requested by it for pur-
25 poses of this title.

1 “(2) Any person who violates paragraph (1) shall be
2 fined not more than \$10,000, or imprisoned not more than
3 five years, or both.

4 “(e)(1) It shall be unlawful for any person knowingly
5 and willfully to give or accept any kickback or any illegal
6 payment in connection with any qualified campaign expense
7 of an eligible candidate or any authorized committee of such
8 candidate.

9 “(2) Any person who violates paragraph (1) shall be
10 fined not more than \$10,000, or imprisoned not more than
11 five years, or both.

12 “(3) In addition to the penalty provided by paragraph
13 (2), any person who accepts any kickback or illegal payment
14 in connection with any qualified campaign expense of an eli-
15 gible candidate or any authorized committee of such candi-
16 date shall pay to the Secretary of the Treasury, for deposit in
17 the general fund of the Treasury, an amount equal to 125
18 percent of the kickback or payment received.

19 “(f)(1) It shall be unlawful for any individual to disclose
20 any information obtained under the provisions of this title
21 except as may be required by law.

22 “(2) Any person who violates paragraph (1) shall be
23 fined not more than \$5,000, or imprisoned not more than one
24 year, or both.

1 "REPORTS TO CONGRESS; REGULATIONS

2 "SEC. 509. (a) The Commission shall, as soon as practi-
3 cable after each election, submit a full report to the Senate
4 setting forth—

5 "(1) the qualified campaign expenses (shown in
6 such detail as the Commission determines necessary)
7 incurred by a candidate and the authorized committees
8 of such candidate;

9 "(2) the amounts certified by it under section 505
10 for payment to each eligible candidate; and

11 "(3) the amount of payments, if any, required
12 from such candidate under section 507, and the rea-
13 sons for each payment required.

14 Each report submitted pursuant to this section shall be print-
15 ed as a Senate document.

16 "(b) The Commission is authorized to prescribe such
17 rules and regulations in accordance with the provisions of
18 subsection (c), to conduct such examinations and audits (in
19 addition to the examinations and audits required by section
20 507), to conduct such investigations, and to require the keep-
21 ing and submission of such books, records, and information,
22 as it deems necessary to carry out the functions and duties
23 imposed on it by this title.

24 "(c) Thirty days before prescribing any rule or regula-
25 tion under subsection (b), the Commission shall transmit a

1 statement with respect to such rule or regulation to the
2 Senate, setting forth the proposed rule or regulation. The
3 statement shall contain a detailed explanation and justifica-
4 tion of such rule or regulation.

5 "PARTICIPATION BY COMMISSION IN JUDICIAL
6 PROCEEDINGS

7 "SEC. 510. (a) The Commission is authorized to appear
8 in and defend against any action filed under section 511,
9 either by attorneys employed in its office or by counsel whom
10 it may appoint without regard to the provisions of title 5,
11 United States Code, governing appointments in the competi-
12 tive service, and whose compensation it may fix without
13 regard to provisions of chapter 51 and subchapter III of
14 chapter 53 of such title.

15 "(b) The Commission is authorized to appear, through
16 attorneys and counsel described in subsection (a), in the dis-
17 trict courts and other appropriate courts of the United States
18 to seek recovery of any amounts determined to be payable to
19 the Secretary of the Treasury as a result of any examination
20 and audit made pursuant to section 507.

21 "(c) The Commission is authorized to petition the courts
22 of the United States for declaratory or injunctive relief con-
23 cerning any civil matter arising under this title, through at-
24 torneys and counsel described in subsection (a). Upon appli-
25 cation of the Commission, an action brought pursuant to this
26 subsection shall be heard and determined by a court of three

1 judges in accordance with the provisions of section 2284 of
2 title 28, United States Code, and any appeal from the deter-
3 mination of such court shall lie to the Supreme Court of the
4 United States. Judges designated to hear the case shall
5 assign the case for hearing at the earliest practicable date,
6 participate in the hearing and determination thereof, and
7 cause the case to be in every way expedited.

8 “(d) The Commission is authorized on behalf of the
9 United States to appeal from, and to petition the Supreme
10 Court of the United States for certiorari to review judgments
11 or decrees entered with respect to actions in which it appears
12 pursuant to the authority provided in this section.

13 “JUDICIAL REVIEW

14 “SEC. 511. (a) Any certification, determination, or other
15 action by the Commission made or taken pursuant to the pro-
16 visions of this title shall be subject to review by the United
17 States Court of Appeals for the District of Columbia Circuit
18 upon petition filed in such court by any interested person.
19 Any petition filed pursuant to this section shall be filed within
20 thirty days after such certification, determination, or other
21 action by the Commission.

22 “(b)(1) The Commission, the national committee of any
23 political party, or any individual eligible to vote for a candi-
24 date is authorized to institute an action under this section,
25 including an action for declaratory judgment or injunctive

1 relief, as may be appropriate to implement or construe any
2 provision of this title.

3 “(2) The district courts of the United States shall have
4 jurisdiction of proceedings instituted pursuant to this subsec-
5 tion and shall exercise such jurisdiction without regard to
6 whether a person asserting rights under the provisions of this
7 subsection has exhausted administrative or other remedies
8 provided by law. Such proceedings shall be heard and deter-
9 mined by a court of three judges in accordance with the pro-
10 visions of section 2284 of title 28, United States Code, and
11 any appeal shall lie to the Supreme Court of the United
12 States. Judges designated to hear the case shall assign the
13 case for hearing at the earliest practicable date, participate in
14 the hearing and determination thereof, and cause the case to
15 be in every way expedited.”.

16 SEC. 3. (a) Section 315(c) of the Federal Election Cam-
17 paign Act of 1971 is amended by striking out “subsection (b)
18 of this section and subsection (d) of this section” and inserting
19 in lieu thereof “subsections (b), (d), and (j) of this section and
20 subsection (a) of section 503”.

21 (b) Section 315(c)(2)(B) of the Federal Election Cam-
22 paign Act of 1971 is amended by inserting before the period
23 at the end thereof the following: “, except that with respect
24 to the limitations established by title V of this Act, the term
25 ‘base period’ means the calendar year 1985”.

1 (c)(1) Section 315 of the Federal Election Campaign
2 Act of 1971 is amended by adding at the end thereof the
3 following:

4 “(i) For purposes of this section, expenditures made on
5 behalf of any candidate for the office of Senator of the United
6 States shall be considered to be expenditures made by such
7 candidate.

8 “(j) Except as otherwise provided in section 504, a can-
9 didate who receives payments pursuant to title V, for use in a
10 campaign for election to the office of Senator of the United
11 States, may not make expenditures in such campaign in
12 excess of—

13 “(1) \$500,000 if such candidate is a candidate for
14 the Senate in a State with a voting age population of
15 1,000,000 or less;

16 “(2) \$.50 multiplied by the voting age population
17 if such candidate is a candidate for the Senate in a
18 State with a voting age population of more than
19 1,000,000 but less than 3,000,000; or

20 “(3) \$.30 multiplied by the voting age population
21 or \$1,500,000, whichever is greater, if such candidate
22 is a candidate for the Senate in a State with a voting
23 age population of 3,000,000 or more.

1 “(k) For purposes of this subsection, the voting age pop-
2 ulation of a State shall be the population certified under sub-
3 section (e) for such State.”.

4 SEC. 4. This Act and the amendments made by this Act
5 shall become effective on January 1, 1988, and shall apply to
6 campaigns for election to the Senate after such date.

○

100TH CONGRESS
1ST SESSION

S. 207

To provide for partial public financing of general elections for candidates in campaigns for the United States Senate, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. GORE introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To provide for partial public financing of general elections for candidates in campaigns for the United States Senate, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Campaign Limitation and
4 Public Financing Act".

5 SEC. 2. The Federal Election Campaign Act of 1971 is
6 amended by adding at the end thereof the following new title:

7 'TITLE V—PUBLIC FINANCING OF SENATE
8 GENERAL ELECTION CAMPAIGNS

9 "DEFINITIONS

10 "SEC. 501. For purposes of this title—

1 “(1) the definitions set forth in section 301 of this
2 Act apply to this title;

3 “(2) ‘general election’ means any regularly sched-
4 uled or special election held for the purpose of electing
5 a candidate to the United States Senate;

6 “(3) ‘eligible candidate’ means a candidate who is
7 eligible, under section 502, to receive payments under
8 this title; and

9 “(4) ‘authorized committee’ means, with respect
10 to any candidate for election to the United States
11 Senate, any political committee which is authorized in
12 writing by such candidate to accept contributions or to
13 make expenditures on behalf of such candidate to fur-
14 ther the election of such candidate.

15 “ELIGIBILITY FOR PAYMENTS

16 “SEC. 502. (a) To be eligible to receive payments under
17 this title, with respect to an election—

18 “(1) a candidate in an election shall certify to the
19 Commission that—

20 “(A) such candidate is the nominee, of one of
21 the major political parties, for election to the
22 United States Senate;

23 “(B) such candidate or the party of such can-
24 didate received, in either of the two most recent
25 general elections for the United States Senate in
26 the same State in which he is a candidate, at

1 least 25 percent of the total vote cast in the elec-
2 tion for such office; or

3 “(C) such candidate and the authorized com-
4 mittees of such candidate have received contribu-
5 tions from individuals in a total amount of not less
6 than 20 percent of the overall limitation on ex-
7 penditures, as determined under section 315(j), by
8 the date of the primary election, with respect to
9 that campaign;

10 “(2) a candidate shall certify that such candidate
11 is seeking election to the United States Senate;

12 “(3) a candidate shall certify to the Commission
13 his intention to comply with applicable provisions of
14 law with respect to any payment received;

15 ”(4) a candidate shall certify, in the declaration
16 filed pursuant to section 504, that he will abide by the
17 limitations on expenditures provided in section 315(j)
18 unless such limitation is increased for such candidate
19 pursuant to section 506.

20 “(5) a candidate who has qualified for a payment
21 under this title shall, within 20 days after qualifying,
22 agree that such candidate and the authorized commit-
23 tees of such candidate—

24 “(A) will obtain and furnish to the Commis-
25 sion any evidence such Commission may request

1 about the campaign expenditures and contributions
2 of such candidate; and

3 “(B) will keep and furnish to the Commission
4 any records, books, and other information it may
5 request;

6 “(6) a candidate shall apply to the Commission for
7 the payment referred to in section 503; and

8 “(7) the Commission shall determine that—

9 “(A) an opposing candidate in such election
10 has not agreed that he will not exceed the limita-
11 tion on expenditures set forth in section 315(j) or
12 has filed a certification pursuant to section 505,
13 stating that such candidate does not intend to
14 comply with the limitations on expenditures; and

15 “(B) at least two candidates have qualified
16 for the election ballot for election to the same seat
17 under the law of the State involved.

18 “(b) Agreements, certifications, and declarations under
19 this section shall be filed with the Commission at the time
20 and in such manner as the Commission requires

21 “ENTITLEMENT TO PAYMENTS

22 “SEC. 503. (a)(1) A candidate who meets the eligibility
23 requirements in section 502(a) is entitled to a payment for
24 use in such candidate’s general election campaign in an
25 amount that is equal to the expenditure limit provided for
26 such State pursuant to section 315(j)(1).

1 “(2) Pursuant to the provisions of section 506, a candi-
2 date receiving a payment pursuant to paragraph (1) shall be
3 subject to the limitation on expenditures provided in section
4 315(j)(2).

5 “(b) All payments received by a candidate or the author-
6 ized committees of such candidate under this title shall be
7 deposited at a national or State bank in a separate checking
8 account which shall contain only funds so received. No ex-
9 penditures of funds received under this section shall be made
10 except by checks drawn on such account.

11 “DECLARATION BY CANDIDATES

12 “SEC. 504. (a)(1) Not later than the date on which a
13 candidate qualifies for election under the law of the appropri-
14 ate State, or 90 days before the date of any general election,
15 whichever is earlier, each candidate for election shall file
16 with the Commission a declaration of whether or not such
17 candidate intends to make expenditures in excess of the limi-
18 tations on expenditures provided under section 315(j).

19 “(2) Any declaration of election filed pursuant to para-
20 graph (1) may be amended or changed at any time within 10
21 days after filing of such declaration. Such amended declara-
22 tion may not be amended or changed further.

23 “(b) Each candidate for election shall notify the Com-
24 mission and each other candidate for the same election within
25 48 hours after such candidate, or any of the authorized com-
26 mittees of such candidate makes any expenditure, or incurs

1 any obligation to make an expenditure, in excess of the limi-
2 tation on expenditures contained in section 315(j).

3 "CERTIFICATIONS BY COMMISSION

4 "SEC. 505. (a) No later than 48 hours after a candidate
5 files a request with the Commission to receive a payment
6 under section 507, the Commission shall certify the eligibility
7 of such candidate to the Secretary of the Treasury for pay-
8 ment in full of the amount to which such candidate is enti-
9 tled. Such request shall contain such information and shall be
10 made in accordance with such procedures as the Commission
11 may provide by regulation.

12 "(b) Initial certifications by the Commission under sub-
13 section (a), and all determinations made by such Commission
14 under this title, shall be final and conclusive, except to the
15 extent that they are subject to examination and audit by the
16 Commission and judicial review under the provisions of this
17 Act.

18 "INCREASED EXPENDITURE LIMITS

19 "SEC. 506. A candidate who is eligible to receive a pay-
20 ment pursuant to the provisions of this title, and receives
21 such payment based, in part, on the fact that an opposing
22 candidate in such election did not agree to abide by the limi-
23 tations on expenditures, shall have such limitation increased
24 pursuant to this Act. Such limitation shall include expendi-
25 tures made from the payment received pursuant to section
26 503, and from contributions received by such candidate and

1 shall be increased to equal an amount not in excess of the
2 limitation provided in section 315(j)(3).

3 "PAYMENTS TO ELIGIBLE CANDIDATES

4 "SEC. 507. (a) The Secretary of the Treasury shall
5 maintain in the Presidential Election Campaign Fund estab-
6 lished by section 9006(a) of the Internal Revenue Code of
7 1954, in addition to any other accounts he maintains under
8 such section, a separate account to be known as the 'Senate
9 General Election Campaign Account' (hereafter in this title
10 referred to as the 'Account'). The Secretary shall deposit into
11 the Account, for use by candidates eligible for payments
12 under this title, the amount available after the Secretary de-
13 termines that amounts in the fund necessary for payments
14 under subtitle H of the Internal Revenue Code of 1954 are
15 adequate. The moneys in the Account shall remain available
16 without fiscal year limitation.

17 "(b) Upon receipt of a certification from the Commission
18 under section 505, the Secretary of the Treasury shall pay
19 the amount certified by such Commission to the candidate to
20 whom the certification relates.

21 "(c) Payments received under this section shall be used
22 only to defray election campaign expenses incurred with re-
23 spect to the period beginning on the day after the date on
24 which the candidate qualifies for the election ballot under the
25 law of the State involved, and ending on the date 90 days
26 after the date of the election, or the date 90 days after the

1 date on which the candidate withdraws from the campaign or
2 otherwise ceases actively to seek election, whichever occurs
3 first. Such payments shall not be used (1) to repay any loan
4 to any individual, or (2) to make any payments, directly or
5 indirectly, to such candidate individually or to any member of
6 the immediate family of such candidate.

7 "EXAMINATION AND AUDITS: REPAYMENTS

8 "SEC. 508. (a) After each general or special election,
9 the Commission may conduct an examination and audit of the
10 campaign accounts of the eligible candidates, as designated
11 by the Commission, in order to determine whether the ex-
12 penditures complied with the provisions of this title.

13 "(b) If the Commission determined that any payment or
14 any portion of any payment made to an eligible candidate
15 under section 507 was in excess of the aggregate amount of
16 the payments to which such candidate was entitled, the Com-
17 mission shall notify such candidate, and such candidate shall
18 pay to the Secretary of the Treasury an amount equal to the
19 excess amount.

20 "(c) Any amount received by an eligible candidate may
21 be retained for a period not exceeding 90 days after the date
22 of the election for the liquidation of all obligations to pay
23 election campaign expenses incurred during the period speci-
24 fied in section 507(c). At the end of such 90-day period 50
25 percent of that portion of any unexpended balance remaining
26 in the accounts of the candidate's authorized committees

1 shall be promptly repaid to the Secretary. In making such
2 determination, all amounts received as contributions shall be
3 considered as having been expended before any amounts re-
4 ceived under this title are expended.

5 “(d) No notification shall be made by the Commission
6 under subsection (b) with respect to a campaign more than 24
7 months after the day of the election to which the campaign
8 related.

9 “(e) All payments received by the Secretary under sub-
10 section (b) shall be deposited by him in the appropriate
11 account.

12 “REPORTS TO CONGRESS

13 “SEC. 509. (a) The Commission shall, as soon as practi-
14 cable after the close of each calendar year, submit a full
15 report to the Committee on Ethics of the United States
16 Senate setting forth—

17 “(1) the expenditures incurred by each qualified
18 candidate, and the authorized committees of such can-
19 didates, specifying which candidates have exceeded the
20 expenditure limits;

21 “(2) the amounts certified under section 505 for
22 payment to each such candidate; and

23 “(3) the expenditures made by candidates who did
24 not agree to, or did not comply with the limitations on
25 expenditures set forth in section 315(j).

1 “(b) In addition to the reports filed pursuant to subsec-
2 tion (a), the Commission shall, at any time a candidate in a
3 campaign exceeds the expenditure limits for such campaign,
4 submit a report to such Committee on Ethics setting forth—

5 “(1) the expenditures incurred by such candidate
6 and the authorized committees of such candidate; and

7 “(2) the amounts certified under section 505 for
8 payment to each such candidate.

9 “(c) Each report submitted pursuant to this section shall
10 be printed as a Senate document.”.

11 LIMITATIONS ON EXPENDITURES IN GENERAL ELECTION

12 CAMPAIGNS

13 SEC. 3. (a) Section 315 of the Federal Election Cam-
14 paign Act of 1971 (2 U.S.C. 441a) is amended by adding at
15 the end thereof the following:

16 “(i) For purposes of this section, expenditures made on
17 behalf of any candidate (as determined under section
18 315(b)(2)(B)) for the office of Senator of the United States
19 shall be considered to be expenditures made by such
20 candidate.

21 “(j)(1) Except as otherwise provided in this Act, a can-
22 didate who receives payments for use in his general election
23 campaign for the office of Senator of the United States, pur-
24 suant to section 507 of this Act may not make expenditures
25 in such campaign in excess of—

1 “(A) \$.50 multiplied by the voting age population
2 plus \$1,500,000 in States with a voting age population
3 of 5 million or less;

4 “(B) \$.50 multiplied by the voting age population
5 plus \$1,000,000 in States with a voting age population
6 of more than 5 million but less than 10 million; or

7 “(C) \$.50 multiplied by the voting age population
8 plus \$500,000 in States with a voting age population
9 of 10 million or more.

10 “(2) For purposes of this subsection, the voting age pop-
11 ulation of a State shall be the population certified under sub-
12 section (e) for such State.”.

13 “(3) A candidate, pursuant to the provisions of section
14 506, may make expenditures in an amount equal to 150 per-
15 cent of the expenditure limit which otherwise applies to such
16 candidate pursuant to paragraph (1).”.

17 (b) Section 315(c) of the Federal Election Campaign Act
18 of 1971 (2 U.S.C. 441a(c)) is amended by adding at the end
19 thereof the following:

20 “(3)(A) The limitation established in subsection (j) shall
21 be increased by the percent difference certified in paragraph
22 (1) minus 2 percent if such difference is 2 percent or more. If
23 such difference is less than 2 percent, such limitation shall be
24 increased by an amount equal to the amount of such
25 difference.

1 “(B) For purposes of this paragraph, the base period is
2 the calendar year of 1986.”.

3 STUDY AND REPORT BY COMMISSION

4 SEC. 4. The Federal Election Commission shall, for 1
5 year, study and monitor the efficacy of the programs result-
6 ing from amendments made by this Act. The Commission
7 shall begin such study 1 year after the date of the first elec-
8 tion in which the amendments made by this Act apply and
9 shall report to Congress no later than April 1 of the year
10 following the completion of such period of studying and
11 monitoring.

12 EFFECTIVE DATE

13 SEC. 5. The amendments made by this Act apply to any
14 campaign for election to the United States Senate for which
15 the election is held more than 1 year after the date of enact-
16 ment of this Act.

17 AUTHORIZATION OF APPROPRIATIONS

18 SEC. 6. There are authorized to be appropriated, in ad-
19 dition to the amounts available pursuant to section 507 of the
20 Federal Election Campaign Act of 1971, as added by this
21 Act, such additional sums as may be necessary to carry out
22 the provisions of this Act.

100TH CONGRESS
1ST SESSION

S. 615

To amend the Federal Election Campaign Act of 1971 to prohibit the use of compulsory union dues for political purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1987

Mr. HELMS (for himself, Mr. THURMOND, Mr. GARN, Mr. NICKLES, Mr. SYMMS, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to prohibit the use of compulsory union dues for political purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 SECTION 1. (a) Section 316(b)(2)(C) of the Federal
4 Election Campaign Act of 1971 is amended by inserting
5 before the period “: *Provided*, That all contributions, gifts, or
6 payments for such activities are made freely and voluntarily,
7 and are unrelated to dues, fees, or other moneys required as a
8 condition of employment”.

1 (b) Section 316(b)(3) of the Federal Election Campaign
2 Act of 1971 is amended by—

3 (1) striking out “and” at the end of subparagraph
4 (B);

5 (2) striking out the period at the end of subpara-
6 graph (C) and inserting “; and”; and

7 (3) adding after subparagraph (C) the following:

8 “(D) to use any fees, dues, or assessments
9 paid to any organization as a condition of employ-
10 ment, or money or anything of value secured by
11 physical force, job discrimination, or financial re-
12 prisal for (i) registration or get-out-the-vote cam-
13 paigns, (ii) campaign materials or partisan political
14 activities used in connection with any broadcast-
15 ing, direct mail, newspaper, magazine, billboard,
16 telephone banks, or any similar type of political
17 communication or advertising, (iii) establishing,
18 administering, or soliciting contributions to a sep-
19 arate segregated fund, or (iv) any other expendi-
20 ture in connection with any election to any politi-
21 cal office or in connection with any primary elec-
22 tion or political convention or caucus held to
23 select candidates for any political office.”.

100TH CONGRESS
1ST SESSION

S. 625

To amend the Federal Election Campaign Act of 1971 to limit candidate expenditures of personal funds.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 1987

Mr. DOMENICI (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to limit candidate expenditures of personal funds.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 315 of the Federal Election Campaign Act of
4 1971 (2 U.S.C. 441a) is amended by adding at the end there-
5 of the following:
6 “(i)(1)(A) Within 15 days after a candidate qualifies for
7 the ballot, under applicable State law, for each election under
8 this Act, such candidate shall file with the Commission, a
9 declaration stating whether or not such candidate intends to
10 expend, in the aggregate, \$250,000 or more from his person-

1 al funds, or the funds of his immediate family, or incur per-
2 sonal loans in excess of such amount, in connection with his
3 campaign for such office.

4 “(B) For purposes of this subsection, ‘immediate family’
5 means a candidate’s spouse, and any child, stepchild, parent,
6 grandparent, brother, sister, half-brother, or half-sister of the
7 candidate, and the spouse of any such person and any child,
8 stepchild, parent, grandparent, brother, half-brother, sister,
9 or half-sister of the candidate’s spouse, and the spouse of any
10 such person.

11 “(C) The statement required by this subsection shall be
12 in such form, and contain such information, as the Commis-
13 sion may, by regulation, require.

14 “(2) Notwithstanding any other provision of law, in any
15 election in which a candidate declares that he intends to
16 expend more than such \$250,000, or intends to incur person-
17 al loans in excess of such \$250,000 or does expend or incur
18 loans in excess of such amount, or fails to file the declaration
19 required by this subsection, the limitations on contributions in
20 subsection (a) of this section, as they apply to all other indi-
21 viduals running for such office shall be increased for such
22 election as follows:

23 “(A) The limitations provided in subsection
24 (a)(2)(A) shall be increased to an amount equal to 200
25 percent of such limitation,

1 “(B) The limitations provided in subsection
2 (a)(1)(A) shall be increased to an amount equal to 1000
3 percent of such limitation, and

4 “(C) The limitations provided in subsection (a)(3)
5 shall be increased to an amount equal to 150 percent
6 of such limitation, but only to the extent that contribu-
7 tions above such limitation are made to candidates af-
8 fected by the increased levels provided in subpara-
9 graphs (A) and (B).

10 “(3) If the limitations in this section are increased pur-
11 suant to paragraph (2) for a convention or a primary election
12 as they relate to an individual candidate, and such individual
13 candidate is not a candidate in any subsequent election in
14 such campaign, including the general election, the provisions
15 of subparagraphs (A) and (B) of paragraph (2) shall cease to
16 apply.

17 “(4) Any candidate who—

18 “(A) declares, pursuant to paragraph (1) that he
19 does not intend to spend, in the aggregate, \$250,000
20 or more from his personal funds or the funds of his im-
21 mediate family or incur personal loans in excess of
22 such amount in connection with his campaign; and

23 “(B) subsequently does spend or incur loans in
24 excess of such amount, or intends to spend or incur
25 loans in excess of such amount,

1 shall notify and file an amended declaration with the Com-
2 mission and shall notify all other candidates for such office
3 within 24 hours after changing such declaration or exceeding
4 such limits, whichever first occurs, by sending such notice by
5 certified mail, return receipt requested.

6 “(5) Any candidate who makes expenditures from his
7 personal funds or the personal funds of his immediate family,
8 or incurs personal loans in connection with his campaign for
9 election to office shall not repay, either directly or indirectly,
10 such loan for such expenditures, to himself or to his immedi-
11 ate family, from any contributions made to such candidate or
12 any authorized committee of such candidate, if such contribu-
13 tion was made after the date of such election.

14 “(6) Notwithstanding any other provision of law, no
15 candidate may make expenditures from his personal funds or
16 the personal funds of his immediate family, or incur personal
17 loans in connection with his campaign for election to such
18 office at any time after 60 days before the date of such elec-
19 tion. The provisions of this paragraph shall apply to all candi-
20 dates regardless of whether such candidate has reached the
21 limits provided in this subsection.

22 “(7) The Commission shall take such action as it deems
23 necessary under the enforcement provisions of this Act to
24 assure compliance with the provisions of this subsection.”.

100TH CONGRESS
1ST SESSION

S. 725

To provide for the public financing of general elections for the United States Senate, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 1987

Mr. MITCHELL (for himself and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To provide for the public financing of general elections for the United States Senate, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Senate Campaign Cost
4 Limitation and Public Financing Act".

5 SEC. 2. The Federal Election Campaign Act of 1971 is
6 amended by adding at the end thereof the following new title:

7 "TITLE V—PUBLIC FINANCING OF SENATE
8 GENERAL ELECTION CAMPAIGNS

9 "DEFINITIONS

10 "SEC. 501. For purposes of this title—

1 “(1) the definitions set forth in section 301 of this
2 Act apply to this title;

3 “(2) ‘general election’ means any regularly sched-
4 uled or special election held for the purpose of electing
5 a candidate to the United States Senate;

6 “(3) ‘primary election’ means (A) an election, in-
7 cluding a runoff election, held for the nomination by a
8 political party of a candidate for election to the United
9 States Senate, or (B) a convention or caucus of a polit-
10 ical party held for the nomination of such candidate;

11 “(4) ‘eligible candidate’ means a candidate who is
12 eligible, under section 502, to receive payments under
13 this title;

14 “(5) ‘authorized committee’ means, with respect
15 to any candidate for election to the United States
16 Senate, any political committee which is authorized in
17 writing by such candidate to accept contributions or to
18 make expenditures on behalf of such candidate to fur-
19 ther the election of such candidate; and

20 “(6) the term ‘immediate family’ means a candi-
21 date’s spouse, and any child, parent, grandparent,
22 brother, half-brother, sister, or half-sister of the candi-
23 date, and the spouse of such individual, and any child,
24 parent, grandparent, brother, half-brother, sister, or

1 half-sister of the candidate's spouse, and the spouse of
2 such individual.

3 "ELIGIBILITY FOR PAYMENTS

4 "SEC. 502. (a) To be eligible to receive payments under
5 this title, with respect to an election—

6 "(1) a candidate in a general election shall certify
7 to the Commission, in accordance with the provisions
8 of this Act or regulations promulgated pursuant to this
9 Act, that—

10 "(A) he or she is seeking election to the
11 United States Senate,

12 "(B) such candidate and the authorized com-
13 mittees of such candidate have—

14 "(i) received contributions from individ-
15 uals in amounts of \$100 or less, which qual-
16 ify for matching funds pursuant to this title,
17 for that campaign in a total amount of not
18 less than 5 per centum of the overall expend-
19 iture limit; and

20 "(ii) received such contributions only
21 from individuals who are residents of the
22 State in which such candidate is seeking
23 election;

24 "(C) at least two candidates have qualified
25 for the election ballot for election to the same seat
26 under the law of the State involved;

1 “(D) the candidate and the authorized com-
2 mittees of such candidate—

3 “(i) will not make campaign expendi-
4 tures in the general election greater than the
5 limitations set forth in section 315(j)(1);

6 “(ii) will abide by the limitations on
7 campaign expenditures for the primary elec-
8 tion pursuant to section 315(j)(2) and section
9 504;

10 “(iii) will not accept any contributions
11 in violation of section 315(a); and

12 “(iv) will not make expenditures from
13 personal funds which exceed the limitation
14 established in section 503;

15 “(E) he or she will agree to cooperate in the
16 case of an audit and examination by the Commis-
17 sion under section 509 and to pay any amounts
18 required under such section; and

19 “(F) such candidate and the authorized com-
20 mittees of such candidate have received contribu-
21 tions aggregating not less than the amount of con-
22 tributions certified under section 505.

23 “(2) a candidate of a political party in a State
24 that has legal requirements for such candidacy, shall,
25 within seven days after receiving such nomination, cer-

5

1 tify to the Commission his or her intention to accept
2 payments under section 508 and to comply with appli-
3 cable provisions of law with respect to such payments;

4 “(3) an independent candidate or a candidate of a
5 political party in a State other than a State referred to
6 in paragraph (2), shall, within seven days after qualify-
7 ing for the general election ballot under the law of the
8 State involved, certify to the Commission his or her in-
9 tention to accept payments under section 508 and to
10 comply with applicable provisions of law with respect
11 to such payments;

12 “(4) a candidate in an election shall, within seven
13 days after qualifying for the election ballot under the
14 law of the State involved, agree that such candidate
15 and the authorized committees of such candidate—

16 “(A) will obtain and furnish to the Commis-
17 sion any evidence such Commission may request
18 about the campaign expenditures and contribu-
19 tions of such candidate; and

20 “(B) will keep and furnish to the Commission
21 any records, books, and other information it may
22 request; and

23 “(b) A candidate eligible, under this section, to receive
24 payments shall apply to the Commission for the initial match-
25 ing payment referred to in section 505(b)(1)(A).

1 “(c) Agreements, certifications, and declarations under
2 this section shall be filed with the Commission at the time
3 and in such manner as the Commission requires.

4 “LIMITATION ON EXPENDITURES OF PERSONAL FUNDS

5 “SEC. 503. No candidate who is eligible under section
6 502 to receive payments under section 508 and who does
7 receive such payments shall make expenditures from the per-
8 sonal funds of such candidate, or the funds of any member of
9 the immediate family of such candidate, aggregating in
10 excess of \$35,000, with respect to the election involved.

11 “LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

12 “SEC. 504. (a) A candidate who is otherwise eligible to
13 receive payments in a general election under section 508 and
14 who receives such payments shall make primary election ex-
15 penditures in accordance with the provisions of this section to
16 be an eligible candidate.

17 “(b)(1) In any election in which an eligible candidate
18 receives 70 percent or more of the vote in such election, the
19 limitation on expenditures for candidates in such primary
20 election shall be an amount equal to one-third of the limita-
21 tion on expenditures in the general election.

22 “(2) In any election in which an eligible candidate re-
23 ceives less than 70 percent of the vote in such election, the
24 limitation on expenditures for such primary election shall be
25 an amount equal to one-half of the limitation on expenditures
26 in the general election.

1 “(3) In any election in which an eligible candidate re-
2 ceives payments under section 508 and exceeds the limitation
3 on primary election expenditures established in this section,
4 all such expenditures in excess of such limitation shall be
5 considered general election expenditures for purposes of the
6 limitation on such general election expenditures provided in
7 section 315(j)(1).

8 “(c) No eligible candidate shall accept contributions
9 from multicandidate political committees which, in the aggre-
10 gate, exceed 20 per centum of the expenditure limit for the
11 general or primary election.

12 “ENTITLEMENT TO PAYMENTS

13 “SEC. 505. (a) Every candidate who meets the eligibil-
14 ity requirements in section 502 is entitled to payments for
15 use in such candidate's general election campaign in an
16 amount equal to the amount of contributions, qualified to be
17 matched pursuant to this title, as such candidate and the au-
18 thorized committees of such candidate receive for that cam-
19 paign up to an amount equal to one-half of the amount of
20 allowed expenditures as provided in section 315(j)(1).

21 “(b)(1) Except as provided in paragraph (2), a candidate
22 eligible to receive payments pursuant to this title shall be
23 entitled to—

24 “(A) an initial payment in an amount equal to the
25 contributions initially certified under section
26 502(a)(1)(B); and

1 “(B) additional matching payments equal to the
2 amount of contributions received from individuals in
3 amounts of \$200 or less, to be paid in—

4 “(i) multiples of \$20,000 under section 508,
5 if, with respect to each such payment, the eligible
6 candidate and the authorized committees of such
7 candidate have received, in addition to the amount
8 of contributions certified by the candidate to the
9 Commission under section 502(a)(1)(B), contribu-
10 tions aggregating \$20,000 which have not been
11 matched under this section and which qualify for
12 matching funds; and

13 “(ii) a final payment (designated as such by
14 the candidate involved) of the balance of the
15 matching funds to which such candidate is entitled
16 under this section.

17 “(2) The total of the payments to which a candidate is
18 entitled under paragraph (1) shall not exceed 50 per centum
19 of the expenditure limitation applicable to such candidate
20 under section 315(j)(1), unless otherwise provided in this
21 title.

22 “(3) An eligible candidate for whom the limitation on
23 expenditures established in section 315(j)(1) is made inappli-
24 cable under section 506, shall be entitled to payments in an
25 amount equal to the difference between the limitation on ex-

penditures applicable to such eligible candidate under section 315(j)(1) and 110 per centum of the total expenditures made by the opponent of such eligible candidate who has made the largest amount of expenditures in such election, up to an amount equal to three times the limitation on expenditures. Such payments shall be made in multiples of \$20,000 as such candidate becomes eligible for such amounts, except that the final payment shall be made in an amount equal to the balance of the total to which such candidate is entitled.

“(4) If the expenditures made by a candidate exceed an amount equal to three times the limitations on expenditures which applies to such candidate, the limits in subsection (b)(1)(B) providing that only contributions in amounts of \$200 or less are eligible for matching payments shall not apply to the opponents of such candidate who are eligible candidates receiving funds pursuant to this title.

“(c) In determining the amount of contributions received by a candidate and the authorized committees of such candidate for the purposes of providing matching funds pursuant to this title—

“(1) no contribution received by the candidate or any of the authorized committees of such candidate as a subscription, loan, advance, deposit, or as a contribution of products or services, shall be taken into account;

1 “(2) no contribution shall be taken into account if
2 such contribution is not made by a written instrument
3 which identifies the person making such contribution by
4 full name and mailing address;

5 “(3) no contribution received from a political com-
6 mittee or any other organization shall be taken into
7 account;

8 “(4) no contribution received from any individual
9 shall be taken into account to the extent that such con-
10 tribution exceeds \$200 when added to the total amount
11 of all other contributions made by that individual to or
12 for the benefit of such candidate in connection with the
13 general election campaign of such candidate;

14 “(5) no contribution (A) which is received before
15 September 1 of the year immediately preceding the
16 year in which the general election for the campaign to
17 which the contribution is made is held and (B) which is
18 not maintained in a separate account until the date on
19 which such candidate qualifies for the general election
20 ballot under the law of the appropriate State for elec-
21 tion, shall be taken into account;

22 “(6) no contribution received from any person or
23 source other than an individual shall be taken into ac-
24 count; and

1 “(7) no contribution received ninety days after the
2 date on which the election involved is held shall be
3 taken into account.

4 “(d) Notwithstanding the provisions of subsection (a), no
5 candidate is entitled to the payment of any amount under this
6 section which, when added to the total amount of contribu-
7 tions received by such candidate and the authorized commit-
8 tees of such candidate and any other payments made to the
9 candidate under this title for such candidate’s general elec-
10 tion campaign, exceeds the amount of the expenditures limi-
11 tation applicable to such candidate for that campaign under
12 section 315(j)(1) unless the provisions of such section have
13 been waived by this title.

14 “(e) All payments received by a candidate or the author-
15 ized committees of such candidate under this title shall be
16 deposited at a national or State bank in a separate checking
17 account which shall contain only funds so received. No ex-
18 penditures of funds received under this section shall be made
19 except by checks drawn on such account.

20 “(f) No contribution received and maintained pursuant
21 to subsection (c)(5) shall be used to make any expenditure
22 until the date on which the candidate qualifies for the general
23 election ballot under the law of the appropriate State.

24 “(g) Each qualified candidate shall receive matching
25 funds equal to the amount of independent expenditures made

1 on behalf of such candidate's opponent or against such candi-
2 date when such amount of independent expenditures exceeds
3 5 per centum of such candidate's overall expenditure limit.
4 Any amounts so received shall not be included in the limits
5 provided for in section 315(j)(1) or subsection (b)(2) or (d) of
6 this section.

7 "WAIVER OF OVERALL EXPENDITURE LIMITATION; ADDI-
8 TIONAL PUBLIC FINANCING FOR CERTAIN CANDI-
9 DATES

10 "SEC. 506. (a)(1) Not later than the date on which a
11 candidate qualifies for the general election ballot under the
12 law of the appropriate State, or ninety days before the date
13 of any general election, whichever is earlier, each candidate
14 in the general election for United States Senate shall file
15 with the Commission a declaration of whether such candidate
16 intends to make expenditures in excess of the limitations on
17 expenditures provided under section 315(j)(1).

18 "(2) Not later than sixty days before the date of such
19 general election, each candidate who has reason to believe
20 that he may make expenditures in excess of such limitations
21 shall notify the Commission to that effect, unless such candi-
22 date filed with the Commission a timely declaration that he
23 intended to exceed such limitations, as provided in paragraph
24 (1).

25 "(3) Each candidate for election shall notify the Com-
26 mission and each other candidate for the same election within

1 forty-eight hours after such candidate, or any of the author-
2 ized committees of such candidate makes any expenditure, or
3 incurs any obligation to make an expenditure, in excess of the
4 limitation on expenditures contained in section 315(j)(1).

5 “(4) Each candidate for United States Senator filing in a
6 primary election, at the time of such filing, shall file with the
7 Commission a declaration of whether such candidate intends
8 to make expenditures in excess of the limitations on expendi-
9 tures provided in section 315(j)(2).

10 “(5) The Commission is authorized to determine, upon
11 its own initiative or upon the request of any candidate for
12 election, whether any candidate has made expenditures or
13 incurred obligations to make expenditures in excess of the
14 limitations contained in section 315(j).

15 “(b) The limitation on expenditures contained in section
16 315(j)(1) shall not apply to any candidate for election if any
17 other candidate in the same election—

18 “(1) fails to file with the Commission a timely
19 declaration as provided in paragraph (1) of subsection
20 (a);

21 “(2) files with the Commission a notice as provid-
22 ed in paragraph (2) of subsection (a);

23 “(3) is required to notify the Commission in con-
24 nection with the making of expenditures as provided in
25 paragraph (3) of subsection (a); or

1 “(4) is not bound by the limitations on expendi-
2 tures provided in section 315(j), or does not accept
3 matching payments pursuant to the provisions of this
4 title.

5 “(c)(1) The provisions of section 505(d) shall not apply
6 to a candidate who elects to receive payments under this title
7 if the expenditure limitation contained in section 315(j)(1) is
8 made inapplicable to such candidate under subsection (b) or
9 (d) of this section.

10 “(2) The additional amount to which a candidate is enti-
11 tled under this subsection shall be based only upon the
12 amount of contributions received after the date on which such
13 expenditure limitation is made inapplicable, except that any
14 contribution which is received from an individual after the
15 date on which the limitation on expenditures is made inappli-
16 cable shall not be subject to the limitation provided in section
17 505(c)(4).

18 “(d) The limitation on expenditures contained in section
19 315(j)(1) shall not include any matching payments received,
20 pursuant to subsection (b)(3) or (g) of section 505, by a candi-
21 date for election.

22 “CERTIFICATIONS BY COMMISSION

23 “SEC. 507. (a) No later than forty-eight hours after a
24 candidate files a request with the Commission to receive pay-
25 ments under section 508, the Commission shall certify the
26 eligibility of such candidate to the Secretary of the Treasury

1 for payment in full of the amount to which such candidate is
2 entitled. Such request shall contain—

3 “(1) such information and shall be made in ac-
4 cordance with such procedures as the Commission may
5 provide by regulation; and

6 “(2) a verification signed by the candidate and the
7 treasurer of the principal campaign committee of such
8 candidate stating that the information furnished in sup-
9 port of the request, to the best of their knowledge, is
10 correct and fully satisfies the requirements of this title.

11 “(b) Initial certifications by the Commission under sub-
12 section (a), and all determinations made by such Commission
13 under this title, shall be final and conclusive, except to the
14 extent that they are subject to examination and audit by the
15 Commission under section 509 and judicial review under sec-
16 tion 513.

17 “(c) Any candidate who knowingly and willfully submits
18 false information to the Commission under this section shall
19 be punished as provided in section 514.

20 “PAYMENTS TO ELIGIBLE CANDIDATES

21 “SEC. 508. (a) The Secretary of the Treasury shall
22 maintain in the Presidential Election Campaign Fund estab-
23 lished by section 9006(a) of the Internal Revenue Code of
24 1986, in addition to any other accounts he maintains under
25 such section, a separate account to be known as the ‘Senate
26 General Election Campaign Account’ (hereafter in this title

1 referred to as the 'Account'). The Secretary shall deposit into
2 the Account, for use by candidates eligible for payments
3 under this title, the amount available after the Secretary de-
4 termines that amounts in the fund necessary for payments
5 under subtitle H of the Internal Revenue Code of 1986 are
6 adequate. The moneys in the Account shall remain available
7 without fiscal year limitation.

8 “(b) Upon receipt of a certification from the Commission
9 under section 507, the Secretary of the Treasury shall pay
10 the amount certified by such Commission to the candidate to
11 whom the certification relates.

12 “(c) Payments received under this section shall be used
13 only to defray election campaign expenses incurred with re-
14 spect to the period beginning on the day after the date on
15 which the candidate qualifies for the general election ballot
16 under the law of the State involved, and ending on the date
17 ninety days after the date of the election, or the date ninety
18 days after the date on which the candidate withdraws from
19 the campaign or otherwise ceases actively to seek election,
20 whichever occurs first. Such payments shall not be used (1)
21 to repay any loan to any individual, or (2) to make any pay-
22 ments, directly or indirectly, to such candidate individually or
23 to any member of the immediate family of such candidate.

24 “(d) Notwithstanding any other provision of this title, a
25 candidate may be reimbursed for an expenditure, not other-

1 wise prohibited, which was made prior to a certification by
2 the Commission pursuant to this section, and made in reli-
3 ance on such certification.

4 "EXAMINATION AND AUDITS: REPAYMENTS

5 "SEC. 509. (a)(1) After each general election, the Com-
6 mission may conduct an examination and audit of the cam-
7 paign accounts of the eligible candidates, as designated by
8 the Commission, in order to determine whether the contribu-
9 tions certified for matching payments and the expenditures
10 made from such matching payments complied with the provi-
11 sions of this title.

12 "(2) After each special election, the Commission may
13 conduct such an examination and audit of the campaign ac-
14 counts of each eligible candidate in such election.

15 "(b)(1) If the Commission determines that any payment
16 or any portion of any payment made to an eligible candidate
17 under section 508 was in excess of the aggregate amount of
18 the payments to which such candidate was entitled, the Com-
19 mission shall notify such candidate, and such candidate shall
20 pay to the Secretary of the Treasury an amount equal to the
21 excess amount.

22 "(2) If the Commission determines that a candidate who
23 has received funds under section 508 for use in his general
24 election campaign has campaign funds in excess of the
25 amount of the campaign expenses allowed pursuant to section
26 315 and this title, the Commission shall so notify the candi-

1 date and such candidate shall pay to the Secretary an amount
2 equal to the amount of the unexpended funds. In making its
3 determination under this paragraph, the Commission shall
4 consider all amounts received as contributions to have been
5 expended before any amounts received under this title are
6 expended.

7 “(3) If the Commission determines that any amount of
8 any payment made to a candidate under section 508 was
9 used for any purpose other than to defray campaign expendi-
10 tures, it shall notify the candidate of the amount so used, and
11 the candidate shall pay to the Secretary of the Treasury an
12 amount equal to two times the amount of such misused funds.

13 “(4) No payment shall be required from a candidate
14 under this subsection in excess of the total amount of all pay-
15 ments received by the candidate under section 508 in connec-
16 tion with the campaign with respect to which the event oc-
17 curred which caused the candidate to have to make a pay-
18 ment or repayment under this subsection.

19 “(5) Any amount received by an eligible candidate may
20 be retained for a period not exceeding ninety days after the
21 date of the general election for the liquidation of all obliga-
22 tions to pay election campaign expenses incurred during the
23 period specified in section 508(c). At the end of such ninety-
24 day period any unexpended balance remaining in the ac-
25 counts of the candidate's authorized committees shall be

1 promptly repaid to the Secretary. In making such determina-
2 tion, all amounts received as contributions shall be considered
3 as having been expended before any amounts received under
4 this title are expended.

5 “(c) No notification shall be made by the Commission
6 under subsection (b) with respect to a campaign more than
7 twenty-four months after the date of the election to which the
8 campaign related.

9 “(d) All payments received by the Secretary under sub-
10 section (b) shall be deposited by him in the appropriate
11 account.

12 “OTHER POWERS AND DUTIES OF THE COMMISSION

13 “SEC. 510. (a) The Commission is authorized to conduct
14 examinations and audits, in addition to the examinations and
15 audits under sections 507 and 509, to conduct investigations,
16 and to require the keeping and submission of any books,
17 records, or other information necessary to carry out the func-
18 tions and duties imposed on such Commission by this title.

19 “(b) The Commission shall consult from time to time
20 with the Secretary of the Senate, the Clerk of the House of
21 Representatives, the Federal Communications Commission,
22 and other Federal officers charged with the administration of
23 laws relating to Federal elections, in order to develop as
24 much consistency and coordination with the administration of
25 such laws as the provisions of this title permit. The Commis-
26 sion shall use the same or comparable data as that used in

1 the administration of such other election laws whenever
2 possible.

3 "REPORTS TO CONGRESS

4 "SEC. 511. (a) The Commission shall, as soon as practi-
5 cable after the close of each calendar year, submit a full
6 report to the Senate setting forth—

7 "(1) the expenditures incurred by each qualified
8 candidate, and the authorized committees of such
9 candidates;

10 "(2) the amounts certified under section 507 for
11 payment to each such candidate; and

12 "(3) the amount of any payments required from
13 any candidate pursuant to section 509, and the reasons
14 for each such payment.

15 Each report submitted pursuant to this section shall be print-
16 ed as a Senate document.

17 "(b) The Commission shall submit, not later than March
18 1 of each year immediately following a year in which any
19 election for United States Senator is held, a special report to
20 the Senate setting forth—

21 "(1) the amounts certified under section 507; and

22 "(2) an estimate, to the extent practicable, of the
23 amount of money necessary to make all payments to
24 which eligible candidates and the national committees
25 of each political party will be entitled with respect to
26 the next two Federal elections.

PROCEEDINGS

17 “(c) The Commission is authorized to petition the courts
18 of the United States for declaratory or injunctive relief con-
19 cerning any civil matter arising under this title, through at-
20 torneys and counsel described in subsection (a). Upon appli-
21 cation of the Commission, an action brought pursuant to this
22 subsection shall be heard and determined by a court of three
23 judges in accordance with the provisions of section 2284 of
24 title 28, United States Code, and any appeal from the deter-
25 mination of such court shall lie to the Supreme Court of the

1 United States. Judges designated to hear the case shall
2 assign the case for hearing at the earliest practicable date,
3 participate in the hearing and determination thereof, and
4 cause the case to be in every way expedited.

5 “(d) The Commission is authorized on behalf of the
6 United States to appeal from, and to petition the Supreme
7 Court of the United States for certiorari to review judgments
8 or decrees entered with respect to actions in which it appears
9 pursuant to the authority provided in this section.

10 “JUDICIAL REVIEW

11 “SEC. 513. (a) Any certification, determination, or other
12 action by the Commission made or taken pursuant to the pro-
13 visions of this title shall be subject to review by the United
14 States Court of Appeals for the District of Columbia Circuit
15 upon petition filed in such court by any interested person.
16 Any petition filed pursuant to this section shall be filed within
17 thirty days after such certification, determination, or other
18 action by the Commission.

19 “(b)(1) The Commission, the national committee of any
20 political party, and any individual eligible to vote for a candi-
21 date for the office of Senator of the United States are all
22 authorized to institute an action under this section, including
23 an action for declaratory judgment or injunctive relief, as
24 may be appropriate to implement or construe any provision of
25 this title.

1 “(2) The district courts of the United States shall have
2 jurisdiction of proceedings instituted pursuant to this subsec-
3 tion and shall exercise such jurisdiction without regard to
4 whether a person asserting rights under the provisions of this
5 subsection has exhausted all administrative or other remedies
6 provided by law. Such proceedings shall be heard and deter-
7 mined by a court of three judges in accordance with the pro-
8 visions of section 2284 of title 28, United States Code, and
9 any appeal shall lie to the Supreme Court of the United
10 States. Judges designated to hear the case shall assign the
11 case for hearing at the earliest practicable date, participate in
12 the hearing and determination thereof, and cause the case to
13 be in every way expedited.

14 “PENALTY FOR VIOLATIONS

15 “SEC. 514. Violation of any provision of this title is
16 punishable by a fine of not more than \$10,000, or imprison-
17 ment for not more than five years, or both.”.

18 LIMITATIONS ON EXPENDITURES IN GENERAL ELECTION

19 CAMPAIGNS

20 SEC. 3. (a) Section 315 of the Federal Election Cam-
21 paign Act of 1971 (2 U.S.C. 441a) is amended by adding at
22 the end thereof the following:

23 “(i) For purposes of this section expenditures made on
24 behalf of any candidate (as determined under section
25 315(b)(2)(B)) for the office of Senator of the United States

1 shall be considered to be expenditures made by such
2 candidate.

3 “(j) Except as otherwise provided in section 505 of this
4 Act, a candidate who receives payments for use in his gener-
5 al election campaign for the office of Senator of the United
6 States, pursuant to section 508 of this Act may not make
7 expenditures—

8 “(1) in such general election campaign in excess
9 of \$600,000, plus 35 cents multiplied by the voting
10 age population of the State in which the election is
11 held, as certified under subsection (e); and

12 “(2) in such eligible candidate's primary election
13 campaign in excess of—

14 “(A) one-third the general election expendi-
15 ture limit applicable to such candidate if any can-
16 didate in such primary receives 70 percent or
17 more of the vote; or

18 “(B) one-half the general election expendi-
19 ture limit applicable to such candidate if no candi-
20 date in such primary receives 70 percent or more
21 of the vote.

22 “(k) Every person (other than a political committee)
23 who makes independent expenditures in excess of \$50 for or
24 against a candidate under title V of this Act during a calen-
25 dar year shall file a statement with the Federal Election

1 Commission containing such information and at such times as
2 the Commission by regulation may require.

3 “(l) No candidate who is eligible to receive payments
4 under section 508 shall accept contributions from multicandi-
5 date political committees which, when added to all contribu-
6 tions received by such candidate from such committees ex-
7 ceeds 20 per centum of the expenditure limit for the general
8 or primary election of such candidate, as established in sub-
9 section (j).”.

10 (b) Section 315(c)(1) of the Federal Election Campaign
11 Act of 1971 (2 U.S.C. 441a(c)(1)) is amended by striking out
12 “subsection (b) of this section and subsection (d) of this sec-
13 tion” and inserting in lieu thereof “subsections (b), (d), (j), (k),
14 and (l) of this section”.

15 (c) Section 315(c)(2)(B) of the Federal Election Cam-
16 paign Act of 1971 (2 U.S.C. 441a(c)(2)(B)) is amended by
17 inserting before the period the following: “, except that with
18 respect to the provisions of subsections (j), (k) and (l), the
19 term ‘base period’ means the calendar year of 1988”.

20 INTERMEDIARY OR CONDUITS

21 SEC. 4. Section 315(a)(8) of the Federal Election Cam-
22 paign Act of 1971 is amended by—

23 (1) striking out “person” the second place it ap-
24 pears and inserting in lieu thereof “person and also the
25 intermediary or conduit”;

1 (2) redesignating such paragraph (8) as paragraph
2 (8)(A); and

3 (3) adding at the end thereof the following:

4 “(B) A gift, subscription, loan, advance or deposit of
5 money or anything of value to a candidate shall be considered
6 a contribution both by the original source of the contribution
7 and by any intermediary or conduit if the intermediary or
8 conduit (i) exercises any control or any direction over the
9 making of the contribution; or (ii) solicits the contribution or
10 arranges for the contribution to be made and directly or indi-
11 rectly makes the candidate aware of such intermediary or
12 conduit’s role in soliciting or arranging the contribution for
13 such candidate; or (iii) engages in any activities of the same
14 kind which resulted in the intermediary or conduit reporting
15 such activities to the Commission under subsection (A) prior
16 to January 1, 1987.

17 “(C) For purposes of subsection (B), a contribution shall
18 not be considered to be a contribution by an intermediary or
19 conduit to the candidate if (i) the intermediary or conduit has
20 been retained by the candidate’s committee for the purpose of
21 fundraising and is reimbursed for expenses incurred in solicit-
22 ing contributions; (ii) in the case of an individual, the candi-
23 date has expressly authorized the intermediary or conduit to
24 engage in fundraising, or the individual occupies a significant
25 position within the candidate’s campaign organization; or (iii)

1 in the case of a political committee, the intermediary or con-
2 duit is an authorized committee of the candidate.”.

3 STUDY AND REPORT BY COMMISSION

4 SEC. 5. The Federal Election Commission shall, for one
5 year, study and monitor the efficacy of the programs result-
6 ing from amendments made by this Act. The Commission
7 shall begin such study one year after the date of the first
8 election in which the amendments made by this Act apply
9 and shall report to Congress no later than April 1 of the year
10 following the completion of such period of studying and
11 monitoring.

12 BROADCAST RATES

13 SEC. 6. Section 315(b)(1) of the Communications Act of
14 1934 (47 U.S.C. 315(b)(1)) is amended by striking the semi-
15 colon and inserting in lieu thereof the following: “provided
16 that in the case of a candidate in an election which may
17 directly result in the election of a person to the office of
18 United States Senator, this provision shall only apply if such
19 candidate has been certified by the Federal Election Commis-
20 sion as eligible to receive payments under title V of the Fed-
21 eral Election Campaign Act;”.

22 EFFECTIVE DATE

23 SEC. 7. This Act and the amendments made by this Act
24 shall apply to any campaign for election to the United States
25 Senate for which the election is held more than one year
26 after the date of enactment of this Act but shall not apply to

1 any election for the United States Senate in 1988 or prior to
2 such elections in 1990.

3 AUTHORIZATION OF APPROPRIATIONS

4 SEC. 8. There are authorized to be appropriated, in ad-
5 dition to the amounts available pursuant to section 508 of the
6 Federal Election Campaign Act of 1971, as added by this
7 Act, such sums as may be necessary to carry out the provi-
8 sions of this Act.

○

APPENDIX 1H

17 601.125

AMENDMENT NO. 0036

S.L.C.

By PELLBill/Res. No. S. 2

AMEND

11 pages

Purpose: To amend the Federal Election Campaign Act of 1971, to better inform the electorate in elections for the office of Senator or Representative in the United States Congress.

IN THE SENATE OF THE UNITED STATES—100th Cong., 1st Sess.

S. 2

To amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees, and for other purposes.

MAR 10 1987

RULES AND

Referred to the Committee on ADMINISTRATION

and ordered to be printed

~~Ordered to lie on the table and to be printed~~

AMENDMENTS intended to be proposed by Mr. PELL

Viz:

1 On page 31, between lines 11 and 12, insert the fol-
2 lowing:

3 INFORMED ELECTORATE

4 SEC. 10. (a) This section may be cited as the "In-
5 formed Electorate Act of 1987".

6 (b) The Federal Election Campaign Act of 1971 is
7 further amended by adding after title V, as added by this
8 Act, the following new title:

1 "TITLE VI—DISSEMINATION OF POLITICAL
2 INFORMATION

3 "DEFINITIONS

4 "SEC. 601. For the purposes of this title—

5 "(1) the definitions set forth in section 301
6 apply to this title;

7 "(2) the term 'major party' means, in an elec-
8 tion for the office of Senator, or Representative in,
9 Resident Commissioner, or Delegate to the Congress,
10 any party whose candidate for Senator in the State
11 involved placed first or second in the number of
12 popular votes received in either of the two most
13 recent general elections;

14 "(3) the term 'minor party' means, in an elec-
15 tion for the office of Senator, or Representative in,
16 Resident Commissioner, or Delegate to the Congress,
17 any party, other than a major party—

18 "(A) whose candidate for Senator in the
19 State involved received more than 5 percent of
20 the popular vote in the most recent general elec-
21 tion;

22 "(B) in the case of an election for the
23 office of Senator, which files with the Federal
24 Election Commission, not later than ninety days
25 before the election involved, a number of signa-

1 tures of registered voters validated by the Fed-
2 eral Election Commission which is equal to 5
3 percent of the popular vote for the office of
4 Senator in the State involved in the most recent
5 general election; or

6 “(C) in the case of an election for the
7 office of Representative in, Resident Commis-
8 sioner, or Delegate to the Congress, which files
9 with the Federal Election Commission, not later
10 than ninety days before the election involved, a
11 number of signatures of registered voters vali-
12 dated by the Federal Election Commission
13 which is equal to 5 percent of the popular vote
14 for the office of Representative in, Resident
15 Commissioner, or Delegate to the Congress, in
16 the congressional district involved, in the most
17 recent general election;

18 “(4) the term ‘free broadcast time’ means time
19 provided by television stations during a prime time
20 access period, pursuant to the provisions of this title;

21 “(5) the term ‘party committee’ means the na-
22 tional party committees, the Senatorial and Congres-
23 sional Campaign Committees, or a party or commit-
24 tee qualifying under subparagraph (B) or (C) of
25 paragraph (3) of this section; and

1 “(6) the term ‘prime time access period’ means
2 the period from 7:30 p.m. to 8 p.m., local time, of
3 each weekday evening.

4 “FREE POLITICAL BROADCASTS

5 “SEC. 602. (a) Each television station licensed under
6 the Communications Act of 1934 shall provide free broad-
7 cast time during the prime time access period, to the party
8 committees who shall allocate time to eligible candidates
9 in any general or special election for the office of Senator
10 or Representative in, Resident Commissioner or Delegate
11 to the Congress. Such allocation may be made to such can-
12 didates exclusively through the Senatorial and Congres-
13 sional Campaign Committees in the case of the major par-
14 ties, and in the case of minor parties, to the party organiza-
15 tion or committee qualified under subparagraph (B) or (C)
16 of section 601(3).

17 “(b) Free broadcast time shall be made available to
18 the party committees in accordance with the provisions of
19 this title.

20 “(c) No television station providing free broadcast
21 time during prime time access periods, pursuant to the pro-
22 visions of this title, shall make or collect any charge, in
23 any form or manner, for providing such time.

5

1 "ALLOTMENT

2 "SEC. 603. (a) Any party committee receiving free
3 broadcast time during a prime time access period under the
4 provisions of this title—

5 "(1) shall use such time in a manner which
6 promotes a rational discussion and debate of issues
7 with respect to the election involved;

8 "(2) shall participate in programs in which not
9 more than 25 percent of the time of each broadcast
10 shall be taken up with presentations other than a
11 candidate's own remarks;

12 "(3) shall not use less than one minute of free
13 broadcast time in any one program;

14 "(4) shall not use more than fifteen minutes of
15 free broadcast time in any twenty-four hour period;
16 and

17 "(5) shall not use an aggregate of more than
18 three hours of free broadcast time on any one televi-
19 sion station during the sixty-day period specified in
20 subsection (b).

21 "(b) Each television station providing free broadcast
22 time under this title shall make free broadcast time avail-
23 able during the prime time access periods beginning on the
24 day sixty days before the date of the general or special

1 election involved and ending at the close of the day before
2 the day of such election.

3 "ELIGIBILITY

4 "SEC. 604. (a) A party committee shall be eligible,
5 upon certification by the Commission under subsection (b),
6 to receive free broadcast time in accordance with section
7 602 and section 603.

8 "(b)(1) A party committee may establish eligibility
9 by filing an application with the Commission for an allot-
10 ment of free broadcast time during prime time access peri-
11 ods, under section 603.

12 "(2) Such application shall be in such form and filed
13 in a manner specified by the Commission but shall include
14 a certification by the party committee—

15 "(A) that any candidates receiving such time
16 from such committee is a candidate for Federal
17 office in a general election involving at least one
18 other candidate for such office who has qualified for
19 the same election ballot under the law of the State in
20 which the election is to be held;

21 "(B) that such committee will keep and furnish
22 to the Commission any books, records, or other in-
23 formation it may request;

24 "(C) that such committee will cooperate in any
25 audit by the Commission; and

21 “SEC. 606. Section 315 of the Communications Act
22 of 1934 shall not apply in the case of the use of television
23 facilities for free broadcast time during prime time access
24 periods under this title.

1 "RULES AND REGULATIONS

2 "SEC. 607. The Commission may prescribe such
3 rules, regulations, and forms as are necessary to carry out
4 the provisions of this title.

5 "AUDITS

6 "SEC. 608. (a) The Commission is authorized to con-
7 duct examinations, audits, and investigations, and to re-
8 quire the keeping of books, records, and other information
9 necessary to carry out the functions and duties imposed on
10 such Commission by this title.

11 "(b) The Commission shall consult from time to time
12 with the Secretary of the Senate, the Clerk of the House of
13 Representatives, the Federal Communications Commis-
14 sion, and other Federal officers charged with the adminis-
15 tration of laws relating to Federal elections, in order to
16 develop as much consistency and coordination in the ad-
17 ministration of such laws as the provisions of this title
18 permit. The Commission shall use the same or comparable
19 data as that used in the administration of such other elec-
20 tion laws whenever possible.

21 "REPORTS TO THE CONGRESS

22 "SEC. 609. The Commission shall submit, not later
23 than June 1 of each year immediately following a year in
24 which any Federal election is held, a full report to each
25 House of the United States Congress setting forth the

1 amount of free time certified to each party committee
2 under section 604.

3 "PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS

4 "SEC. 610. (a) The Commission is authorized to
5 appear in and defend against any action filed under section
6 611, either by attorneys employed in its office or by coun-
7 sel whom it may appoint without regard to the provisions
8 of title 5, United States Code, governing appointments in
9 the competitive service, and whose compensation it may
10 fix without regard to the provisions of chapter 51 and title
11 III of chapter 53 of such title.

12 "(b) The Commission is authorized to petition the
13 courts of the United States for declaratory or injunctive
14 relief concerning any civil matter arising under this title,
15 through attorneys and counsel described in subsection (a).
16 Upon application of the Commission, an action brought
17 pursuant to this subsection shall be heard and determined
18 by a court of three judges in accordance with the provi-
19 sions of section 2284 of title 28, United States Code, and
20 any appeal from the determination of such court shall lie to
21 the Supreme Court of the United States. Judges designated
22 to hear the case shall assign the case for hearing at the
23 earliest practicable date, participate in the hearing and de-
24 termination thereof, and cause the case to be in every way
25 expedited.

1 “(c) The Commission is authorized on behalf of the
2 United States to appeal from, and to petition the Supreme
3 Court of the United States for certiorari to review judg-
4 ments or decrees entered with respect to actions in which it
5 appears pursuant to the authority provided in this section.

6 “JUDICIAL REVIEW

7 “SEC. 611. (a) Any certification, determination, or
8 other action by the Commission made or taken pursuant to
9 the provisions of this title shall be subject to review by the
10 United States Court of Appeals for the District of Colum-
11 bia Circuit upon petition filed in such court by any inter-
12 ested person. Any petition filed pursuant to this section
13 shall be filed within thirty days after such certification, de-
14 termination, or other action by the Commission.

15 “(b)(1) The Commission, any party committee, or
16 any individual eligible to vote in a Federal election in the
17 United States is authorized to institute an action under this
18 section, including an action for declaratory judgment or
19 injunctive relief, as may be appropriate to implement or
20 construe any provision of this title.

21 “(2) The district courts of the United States shall
22 have jurisdiction over proceedings instituted pursuant to
23 this subsection and shall exercise such jurisdiction without
24 regard to whether a person asserting rights under the provi-
25 sions of this subsection has exhausted all administrative or
26 other remedies provided by law. Such proceedings shall be

1 heard and determined by a court of three judges in accord-
2 ance with the provisions of section 2284 of title 28, United
3 States Code, and any appeal shall lie to the Supreme Court
4 of the United States.

5 "PENALTY FOR VIOLATIONS

6 "SEC. 612. A violation of any provision of this title is
7 punishable by a fine of not more than \$10,000, or impris-
8 onment for not more than five years, or both."

9 (c) The Federal Election Commission shall study and
10 monitor the efficacy of the programs resulting from
11 amendments made by this section. The Commission shall
12 begin such study ninety days before the date of the first
13 election in which the amendments made by this section
14 apply and shall report to Congress no later than June 1 of
15 the year following the date of such election.

16 (d) There are authorized to be appropriated to the
17 Federal Election Commission such additional sums as may
18 be necessary to carry out the provisions of this section.

19 On page 31, line 13, strike out "10" and insert in lieu
20 thereof "11".

21 On page 31, line 21, strike out "11" and insert in lieu
22 thereof "12".

DISCUSSION DRAFT

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide that candidates receiving public funds participate in public debates or forums.

IN THE SENATE OF THE UNITED STATES—100th Cong., 1st Sess.

S. 2

To amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. GRAHAM

Viz:

1 On page 5, line 18, strike out “(5)” and insert in lieu
2 thereof “(6)”.

3 On page 5, between lines 17 and 18, insert the follow-
4 ing:

5 “(5) agree, in writing, that such candidate will
6 participate in public debates pursuant to the provi-
7 sions of sections 504 and 514 of this title; and

1 On page 18, line 16, strike out the final quotation
2 marks and period.

3 On page 18, between lines 16 and 17, insert the fol-
4 lowing:

5 "PUBLIC DEBATES

6 "SEC. 514. (a) No candidate shall be eligible to re-
7 ceive a payment, pursuant to the provisions of this title, for
8 use in a general election campaign unless such candidate
9 participates in public debates or forums in accordance with
10 the provisions of this section and section 504 of this title.

11 "(b)(1) Each candidate receiving funds pursuant to
12 this title shall participate in at least two debates or forums
13 during the general election period.

14 "(2) Such debate or forum shall be with at least one
15 of the opponents of such candidate unless such debate or
16 forum is conducted pursuant to regulations and procedures
17 provided by the Commission.

18 "(3) The Commission shall promulgate rules and reg-
19 ulations regarding the debates and forums, including—

20 "(i) provisions to be followed when only one
21 candidate in an election is an eligible candidate, pur-
22 suant to the provisions of this title;

23 "(ii) the sponsorship of such debates and
24 forums;

1 “(iii) the procedures, format, and physical re-
2 quirements of such debates and forums; and

3 “(iv) the participation by third party candidates.

4 “(4) The Commission may provide that candidates
5 must participate in more than two debates, and shall be
6 responsible for ensuring that all eligible candidates partici-
7 pate in such debates or forums.

8 “(c) If only one candidate is participating in a debate
9 or forum, a format shall be provided so that such candidate
10 is asked and answers questions in a public forum conduct-
11 ed pursuant to regulations promulgated by the Commis-
12 sion.”.

13 On page 15, between lines 7 and 8, insert the follow-
14 ing:

15 “(i) If the Commission determines that any candidate
16 who has received payments under this title failed to par-
17 ticipate in debates or forums pursuant to the provisions of
18 section 514, the Commission shall so notify such candidate
19 and such candidate shall pay to the Secretary an amount
20 equal to the amount of the payments made to such candi-
21 date pursuant to section 506.

APPENDIX 2



U.S. CHAMBER OF COMMERCE

Mick Staton
Manager
Political Action Department

June 1, 1987

The Honorable Wendell Ford
United States Senate
Washington, D.C. 20510

Dear Senator Ford:

This is in response to your question of the U.S. Chamber's witness, Mr. G. Anthony Campbell of Flowers Industries, at the Rules Committee hearing on April 22, 1987 regarding the U.S. Chamber's position on public financing of presidential elections.

Our policy statement on campaign finance reads, in pertinent part:

Taxpayer subsidies of federal elections would dangerously extend the government's role in a traditionally voluntary political process based on individual choice. Citizens should not be forced to support, through their tax dollars, political candidates whose policies they may oppose.

Therefore, the U.S. Chamber does not support the use of tax dollars to fund presidential campaigns.

Sincerely,

Mick Staton

APPENDIX 3A

April 1987

ORGANIZATIONS IN SUPPORT OF S. 2:
THE BOREN-BYRD SENATORIAL ELECTION CAMPAIGN ACT

American Association of University Women
American Institute of Architects
American Public Power Association
Americans for Indian Opportunity
B'nai B'rith Women
Center for Science in the Public Interest
Children's Defense Fund
The Children's Foundation
Church of the Brethren, Washington Office
Church Women United
Citizens Against PACs
Coalition of Consumer Organizations
Committee for Children
Common Cause
Community Nutrition Institute
Consumer Federation of America
Consumers Union of U.S., Inc.
Democracy Project
Environmental Action
Environmental Policy Institute
Friends Committee on National Legislation
Friends of the Earth
The General Board of Church and Society
of the United Methodist Church
Government Accountability Project
Gray Panthers
Jesuit Social Ministries
League of United Latin American Citizens
Lutheran Office for Governmental Affairs
National Association of Community Action Agencies
National Coalition to Ban Handguns
National Community Action Foundation
National Council of the Churches of Christ of the U.S.A.
National Council of La Raza
The National Council on Aging, Inc.
National Farmers Organization
National Farmers Union
National Insurance Consumer Organization
National Pork Producers Council
National Puerto Rican Coalition
National Puerto Rican Forum
NETWORK: A Catholic Social Justice Lobby

(over)

-2-

The New Populist Forum
People for the American Way
Presbyterian Church (USA), Washington Office
Public Citizen's Congress Watch
Public Voice for Food and Health Policy
Rural Coalition
Southwest Voter Registration Education Project
Union of American Hebrew Congregations
Unitarian Universalist Association of Churches of North
America, Washington Office
United Church of Christ, Office for Church in Society
U.S. Public Interest Research Group
U.S. Student Association
Washington Ethical Action Office
Women's Action for Nuclear Disarmament

APPENDIX 3B

April 23, 1987

Listed below are the 124 newspapers which have published editorials expressing support for S. 2, the Senatorial Election Campaign Act. The newspapers are listed in alphabetical order by city.

Aiken Standard; Aiken, South Carolina
The Alpena News; Alpena, Michigan
The Recorder; Amsterdam, New York
Anderson Daily Bulletin; Anderson, Indiana
The Athens Messenger; Athens, Ohio
Journal; Atlanta, Georgia
Kennebec Journal; Augusta, Maine
Illinoian-Star Daily; Beardstown, Illinois
The Beaumont Enterprise; Beaumont, Texas
Beaver County Times; Beaver, Pennsylvania
The Bennington Banner; Bennington, Vermont
The Globe Times; Bethlehem, Pennsylvania
The Sun Herald; Biloxi-Gulfport, Mississippi
Press & Sun Bulletin; Binghamton, New York
Boca Raton News; Boca Raton, Florida
The Boston Globe; Boston, Massachusetts
Daily Camera; Boulder, Colorado
Bozeman Daily Chronicle; Bozeman, Montana
Brattleboro Reformer; Brattleboro, Vermont
The Courier-News; Bridgewater, New Jersey
South Idaho Press; Burley, Idaho
Cadillac News; Cadillac, Michigan
The Cedar Rapids Gazette; Cedar Rapids, Iowa
Champaign-Urbana News-Gazette; Champaign, Illinois
Charleston Daily Mail; Charleston, West Virginia
The Bolivar Commercial; Cleveland, Mississippi
The Columbia Record; Columbia, South Carolina
The Dallas Morning News; Dallas, Texas
News-Journal; Daytona Beach, Florida
Delray Beach News Journal; Delray Beach, Florida
The Des Moines Register; Des Moines, Iowa
The Washington Post; District of Columbia
The Intelligencer/Record; Doylestown, Pennsylvania
The Courier-Express; Du Bois, Pennsylvania
The Star-Democrat; Easton, Maryland
Daily Courier-News; Elgin, Illinois
Elk City Daily News; Elk City, Oklahoma
Enid Morning News; Enid, Oklahoma
Erie Daily Times; Erie, Pennsylvania
The Register-Guard; Eugene, Oregon
The Evansville Press; Evansville, Indiana
Northwest Arkansas Times; Fayetteville, Arkansas
Fayetteville Observer; Fayetteville, North Carolina
The Flint Journal; Flint, Michigan
Fort Myers News-Press; Fort Myers, Florida
The Fresno Bee; Fresno, California
Gainesville Sun; Gainesville, Florida
The Dispatch; Gilroy, California

The Post-Star; Glens Falls, New York
The Recorder; Greenfield, Massachusetts
Grundy Center Register; Grundy Center, Iowa
The Times; Hammond, Indiana
Hannibal Courier-Post; Hannibal, Missouri
The Hartford Courant; Hartford, Connecticut
The Gleaner; Henderson, Kentucky
Kentucky New Era; Hopkinsville, Kentucky
Herald-Dispatch; Huntington, West Virginia
Tri-City Times; Imlay City, Michigan
The Clarion-Ledger - Jackson Daily News; Jackson, Mississippi
The Daily Journal; Kankakee, Illinois
The Kansas City Star; Kansas City, Missouri
The Kokomo Tribune; Kokomo, Indiana
The Ledger; Lakeland, Florida
Lawton Morning Press; Lawton, Oklahoma
Valley News; Lebanon, New Hampshire
The Daily News; Lebanon, Pennsylvania
Leesburg Commercial; Leesburg, Florida
Lodi News-Sentinel; Lodi, California
Newsday; Long Island, New York
The Journal; Lorain, Ohio
Los Angeles Herald Examiner; Los Angeles, California
The Courier-Journal; Louisville, Kentucky
The Manhattan Mercury; Manhattan, Kansas
The McDowell News; Marion, North Carolina
The Ledger Independent; Maysville, Kentucky
Midland Reporter-Telegram; Midland, Texas
The Minot Daily News; Minot, North Dakota
Missoulain; Missoula, Montana
The Modesto Bee; Modesto, California
Monessen Valley Independent; Monessen, Pennsylvania
The Advertiser; Montgomery, Alabama
The Murray Ledger and Times; Murray, Kentucky
The Napa Register; Napa, California
Daily Press; Newport News, Virginia
New Jersey Herald; Newton, New Jersey
The Norman Transcript; Norman, Oklahoma
The Transcript; North Adams, Massachusetts
The Press-Courier; Oxnard, California
Palatka Daily News; Palatka, Florida
Palos Verdes Peninsula News; Palos Verdes, California
The Paris Daily Beacon-News; Paris, Illinois
The Parkersburg Sentinel; Parkersburg, West Virginia
The Berkshire Eagle; Pittsfield, Massachusetts
The Portsmouth Herald; Portsmouth, New Hampshire
Reno Gazette-Journal; Reno, Nevada
Times-Union; Rochester, New York
The News-Review; Roseburg, Oregon
Roswell Daily Record; Roswell, New Mexico
St. Louis Post-Dispatch; St. Louis, Missouri
St. Petersburg Times; St. Petersburg, Florida
The Daily Times; Salisbury, Maryland
The Tribune; San Diego, California

Santa Maria Times; Santa Maria, California
Daily American; Somerset, Pennsylvania
The State Journal-Register; Springfield, Illinois
Statesville Record & Landmark; Statesville, North Carolina
The Daily News Leader; Staunton, Virginia
Daily News-Sun; Sun City, Arizona
Tallahassee Democrat; Tallahassee, Florida
Temple Daily Telegram; Temple, Texas
Texas City Sun; Texas City, Texas
Register Citizen; Torrington, Connecticut
Ukiah Daily Journal; Ukiah, California
Urbana Daily Citizen; Urbana, Ohio
Vallejo Times-Herald; Vallejo, California
Vero Beach Press-Journal; Vero Beach, Florida
Waterloo Courier; Waterloo, Iowa
Watertown Public Opinion; Watertown, South Dakota
The News-Sun; Waukegan, Illinois
Westfield Evening News; Westfield, Massachusetts
Wheeling News-Register; Wheeling, West Virginia
The Winchester Star; Winchester, Virginia
The News Tribune; Woodbridge, New Jersey
York Daily Record; York, Pennsylvania

APPENDIX 3CBEFORE THE
FEDERAL ELECTION COMMISSIONCOMMENTS OF COMMON CAUSE
ON NOTICE OF PROPOSED RULEMAKING

11 C.F.R. § 110.3 TO § 110.6

The Commission's Notice of Proposed Rulemaking regarding 11 C.F.R. § 110.3 to § 110.6^{1/} invites public comments on several issues of importance to the effective enforcement of the campaign finance laws. Common Cause addresses three such areas: (1) rules governing contributions by conduits or intermediaries, particularly with respect to the "bundling" of earmarked contributions; (2) criteria for determining affiliation between political committees; and (3) rules governing multiple political committees established by the same candidate for office.^{2/}

In each of these areas there is substantial room for improvement in the current administration of the Federal Election Campaign Act ("FECA"). In particular, the Commission's current

1/ Notice of Proposed Rulemaking, Contribution and Expenditure Limitations and Prohibitions, 51 Fed. Reg. 27,183-27,192 (July 30, 1986).

2/ Preparation of the third section was delayed by a medical emergency in the family of one of Common Cause's counsel. The section will be ready next week. Common Cause will then file a revised set of comments that includes all three sections.

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treatment of bundling fundamentally undermines the entire structure of the contribution limits in the FECA. To remedy the problems that have arisen in these areas, we urge the Commission to move promptly and forcefully along the lines suggested below. We also request an opportunity for Fred Wertheimer, President of Common Cause, to give testimony at the Commission's hearing on September 17, 1986.

I. "Bundling" -- Earmarked Contributions

The Commission's current interpretation of 11 C.F.R. § 110.6, the regulation concerning "earmarked" contributions, has encouraged flagrant circumvention of the FECA's contribution limits. If the Commission continues to permit the "bundling" of unlimited amounts of earmarked contributions, the FECA's fundamental purpose of preventing corruption and the appearance of corruption will be severely undermined.

The process of bundling is simple. For example, a political committee selects a candidate it wishes to benefit and influence, and sends out a mailing asking its supporters to write contribution checks made out to the candidate and to send them to the committee. The committee collects large numbers of these checks, "bundles" them together, and hands them over to the candidate. Alternatively, even if it does not collect the checks itself, the PAC arranges for the checks to be received by the

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candidate in a manner that makes it equally clear to the candidate that the PAC was responsible for arranging for the contributions.

The purpose of bundling is transparent. It is to avoid the FECA's contribution limits. The bundler seeks to provide the candidate with more funds than the bundler itself could legally contribute. The effect of bundling is pernicious, and obviously so. The candidate knows which interest groups have filled his or her campaign coffers, as surely as if the committee itself had handed over its own check for tens or hundreds of thousands of dollars. The bundler obtains credit with the candidate for the aggregate amount of the bundled contributions.

If permitted to continue, bundling will substantially undermine one of the primary goals of the FECA -- one which the Supreme Court firmly upheld in Buckley v. Valeo. As the Court recognized, "It is unnecessary to look beyond the Act's primary purpose -- to limit the actuality and appearance of corruption resulting from large individual financial contributions -- in order to find a constitutionally sufficient justification" for the \$1,000 individual contribution limit.

"To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. . . . Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public

awareness of the opportunities for abuse inherent in a regime of large individual financial contributions."^{3/}

The same reasoning applies to the \$5,000 contribution limit for multicandidate political committees, which the Court also upheld.^{4/}

In recent years, bundling has become increasingly widespread because the Commission has decided erroneously that bundled contributions need not be counted against the contribution limits of the intermediary that solicits, collects, and delivers them to the candidate.^{5/} Bundling cuts across the political spectrum -- from large defense contractors to Council for a Livable World, from NCPAC to the feminist interests that sponsor EMILY's List. The practice restores the impact of influence-seeking aggregated wealth on the political process.

An article in the Wall Street Journal outlined the bundling practices of Alignpac, a PAC of insurance agents established to lobby on the tax reform bill. FEC records show that Alignpac itself gave Senate Finance Committee chairman Robert Packwood a \$1,000 contribution. In addition, Alignpac

^{3/} 424 U.S. 1, 26-27 (1976).

^{4/} Id. at 35-36.

^{5/} FEC Advisory Opinion 1980-46 (NCPAC); In re Council for a Livable World, MUR 1028 (1980).

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collected \$215,000 in bundled contributions from its members, which it turned over to Senator Packwood. While the limit on what an individual PAC can contribute to a candidate is \$5,000, Alignpac used bundling to enable it to deliver -- and take credit for -- \$216,000 in contributions to the chairman of the committee in charge of the tax reform legislation.

A Common Cause analysis of the 1983-84 election cycle shows that the National Republican Senatorial Committee bundled \$3 million in contributions to Republican Senate candidates. This aggregate amount was five times as much as NRSC could lawfully give those candidates in direct contributions. Under the FECA, each party's senatorial campaign committee is allowed to give \$17,500 to each candidate in direct contributions. Particularly for the largest recipients, the NRSC's bundling campaign overwhelmed the statutory limit: \$272,729 to Lousma in Michigan, \$254,146 to Humphrey in New Hampshire, \$237,140 to Percy in Illinois, and \$201,429 to Jepsen in Iowa.^{6/}

On the Democratic side, a recent Los Angeles Times article documents the bundling practices of EMILY's List, which operates as a "donor network" for feminist candidates. According to this report, EMILY's List distributed more than \$119,000 in bundled contributions by mid-July of this year in connection with

^{6/} A Common Cause Analysis of Bundling by the National Republican Senatorial Committee (NRSC), March 11, 1986.

the 1986 senatorial campaigns of Barbara Mikulski of Maryland and Harriett Woods of Missouri.^{7/}

The campaign finance laws do not permit these practices. The legislative history of the FECA specifies that, if the "conduit" or "intermediary" of an earmarked contribution exercises "direct or indirect control" over the contribution, then the intermediary must count the money against its own contribution limit. The money is also treated as a contribution from the source of the funds.^{8/} The words "or indirect" signify that earmarked contributions should be attributed to an intermediary, short of exclusive control over the choice of the recipient.

Consistent with congressional intent, the Commission provided in 14 C.F.R. § 110.6(d)(1) that a conduit's contribution limits would be affected by passing on earmarked contributions "where the conduit exercises any direction or control over the choice of the recipient candidate." "Direction" and "control" are independent criteria; there is no need for "control" as long as the intermediary exercises "direction" over the choice of the recipient. The term "direction", properly construed, embraces

^{7/} "In Campaign for U.S. Senate, E-M-I-L-Y Spells Money for Feminist Candidates," Los Angeles Times (July 13, 1986).

^{8/} H.R. Rep. No. 1438, 93d Cong., 2d Sess. 51 (1974) (conference report, explaining 2 U.S.C. § 441a(a)(8)); H.R. Rep. No. 1239, 93d Cong., 2d Sess. 16 (1974) (House report).

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the ability to guide or influence another's conduct and not merely to order another person to do something.^{9/}

Faithful adherence to the language of this regulation and to the clear intention of Congress requires an intermediary to count "bundled" contributions against its own contribution limits. A conduit makes key decisions about the flow of bundled contributions from the source to the recipient. It selects the recipients, solicits contributions from its supporters on behalf of specific recipients, and directs the money to the candidates so that it can get the credit, sometimes by collecting the contribution checks itself and delivering them en masse to the candidate. The intermediary benefits from enhanced access and influence with the recipient candidate. This sort of activity is what Congress had in mind when it used the language "indirect control" in the legislative history. If the regulation is properly to interpret and implement the statute, such activity must also fall within the meaning of the word "direction."^{10/}

The Commission took a wrong turn in 1980 when it decided that NCPAC and Council for a Livable World could "bundle"

^{9/} See, e.g., Webster's Ninth New Collegiate Dictionary 358 (1983).

^{10/} The formulation in the regulation, "direction or control," has the same meaning as the phrase used in the legislative history. See 51 Fed. Reg. at 27,189 (notice of proposed rulemaking).

without attributing the bundled contributions to their own limits.^{11/} The Commission seems to have concluded, without a valid justification, that "direction" did not exist unless the intermediary could supersede a supporter's decision to make a contribution benefiting a particular candidate.^{12/} It also seems completely to have ignored the key point in terms of the FECA's overall purposes -- the likely or at least the intended effect of "bundled" contributions on the recipient candidates.^{13/}

Rather than perpetuating its 1980 mistake by incorporating the reasoning of AO 1980-46 and MUR 1028 into the regulations, as suggested in the Notice of Proposed Rule-making,^{14/} the Commission should take this opportunity to rectify the error. Accordingly, Common Cause recommends that the Commission revise its approach to restrict bundling practices. The Commission should define "direction or control" in a manner that expressly includes bundling.^{15/} We recommend the addition of

^{11/} FEC Advisory Opinion 1980-46; In re Council for a Livable World, MUR 1028 (1980).

^{12/} See MUR 1028, General Counsel's Brief at 4 (June 21, 1980) ("In terms of direction, the Council does select the candidates for whom it will make mailings and does suggest to its supporters that contributions be made. It is important however, that this activity occurs prior to the time the supporters have made decisions to contribute to candidates. After a supporter has decided whether or not to act on the Council's suggestion, the Council cannot change the recipient or the amount.").

^{13/} See id. at 4-5.

^{14/} 51 Fed. Reg. at 27,189.

^{15/} We believe that the same criteria for "direction or control" should be applied to all political committees, including

[Footnote continued next page]

subsection (3) to § 110.6(d) as follows:

"(3) For purposes of this section, an intermediary exercises "direction or control" if it actively solicits others to make contributions to particular candidates and arranges for the funds to be received by the candidate in a manner that makes clear to the candidate that the intermediary was responsible for arranging for the contributions."

Bundled contributions would therefore be attributed to the intermediary for purposes of the contribution limits. The aggregate of direct and bundled contributions by an intermediary to a particular candidate could not exceed the intermediary's applicable contribution limit. For a multicandidate committee, this limit is \$5,000 per candidate per election;^{16/} for other intermediaries, the limit is \$1,000.^{17/} The proposed regulation would eliminate the incentive to bundle contributions in order to evade and undermine the contribution limits that are central to the FECA.

[Footnote continued from preceding page]

separate segregated funds of corporations, labor unions, or trade associations. As the Commission has recognized in its advisory opinions, see FEC Advisory Opinion 1986-4 (Armstrong World Industries); In re AOR 1976-92 (Boeing Civic Pledge Program), pressures to contribute to particular candidates may be particularly effective in the corporate or labor PAC setting, because of the dependence of employees and union members on the sponsoring organization. The phrase "direction or control" can and should be construed to attribute such contributions to the intermediary organization.

^{16/} 2 U.S.C. § 441a(a)(2)(A) (1982).

^{17/} 2 U.S.C. § 441a(a)(1)(A) (1982).

II. Affiliation Between Political Committees

As the Commission's rulemaking notice suggests, a clarification of the criteria for determining affiliation between political committees is necessary to ensure adequate enforcement of the "antiproliferation" provision of the FECA.^{18/} That provision treats contributions by affiliated committees -- those "established or financed or maintained or controlled" by the same person or group of persons -- as if made by a single political committee.^{19/} Congress enacted the antiproliferation rule to prevent sponsoring organizations or political committees from evading the FECA's contribution limits by using their resources and expertise to create or sustain spin-off committees, which would be subject to separate contribution and expenditure limits.^{20/}

The statutory concept of affiliation encompasses two distinct types of conduct. First, affiliation arises when one sponsoring organization or committee "establishes" or "finances"

^{18/} See 51 Fed. Reg. at 27,184.

^{19/} 2 U.S.C. § 441a(a)(5) (1982).

^{20/} See generally H.R. Rep. No. 1057, 94th Cong., 2d Sess. 57-58 (1976); FEC Advisory Opinion 1976-104 (antiproliferation provision intended "to prevent evasion of the [FECA's] contribution limits by the existence of splinter political action committees, which were ostensibly separate entities, but were in fact set up, aided, directed or controlled in some manner by the parent organization").

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a second sponsoring organization or committee at the time of the latter's formation. Second, affiliation exists where, through a continuing relationship or operation, one sponsoring organization or political committee "maintains," "finances," or "controls" another. Under the statute, a finding of affiliation does not necessarily require any particular conduct or coordination with respect to the making of specific contributions.^{21/}

Current section 110.3(a)(1)(iii) of the Commission's regulations^{22/} identifies a number of factors which should be considered as part of an overall determination whether two sponsoring organizations or political committees are affiliated. As currently enforced, however, the indicia contained in this section are inadequate, particularly as they relate to activity falling under the general category of "establishment."

In one egregious example, the Commission recently concluded in In re Republican National Independent Expenditure Committee, et al.,^{23/} that the Republican National Independent Expenditure Committee ("RNIEC") and the NRSC were unaffiliated. This decision was reached despite a number of indicia of

^{21/} Coordination is regulated by other sections of the FECA. 2 U.S.C. §§ 431(17), 441a(a)(7)(B)(i) (1982).

^{22/} 11 C.F.R. § 110.3(a)(1)(iii).

^{23/} MUR 1602, petition for review pending sub nom. Common Cause v. FEC, No. 85-1130 (D.D.C. filed Apr. 10, 1986).

affiliation: the treasurer of RNIEC, Rodney Smith, served as Finance Director and Treasurer of NRSC until two months prior to the time that he cofounded RNIEC;^{24/} RNIEC used NRSC's contributor list -- supplied through Rodney Smith -- in its fundraising efforts, and that list accounted for more than half of the funds raised by RNIEC;^{25/} and another cofounder of RNIEC, Senator John Heinz, had been a former Chairman of NRSC and was an active member of that committee when RNIEC was formed and made its decision to support the same candidate that NRSC was supporting.^{26/} The current regulations need to be rewritten to clarify that such activity should lead to a finding of affiliation under the antiproliferation provision.

The Commission's rulemaking proposal clarifies the existing affiliation regulation in a number of important respects. Still more should be done, however, expressly to define the types of activities that Congress intended to prevent when it adopted the antiproliferation provision. Accordingly, Common Cause recommends the following revisions to the Commission's proposed affiliation regulations.

^{24/} In re Republican National Independent Expenditure Committee, et al., MUR 1602, General Counsel's Brief at 3 (Oct. 30, 1984).

^{25/} Id. at 5, 12; General Counsel's Report at 1-2 (Feb. 5, 1985); General Counsel's Report at 16 (June 21, 1984).

^{26/} General Counsel's Report at 1-2 (Apr. 13, 1984); General Counsel's Brief at 4 (Oct. 30, 1984).

A. Formation of a Political Committee

New subsection (G) to 11 C.F.R. § 110.3(a)(3)(iii) would raise an inference of affiliation if "a sponsoring organization or a committee had a significant role in the formation of another sponsoring organization or committee."^{27/} In proposing this new provision, the Commission has attempted to identify those instances where one sponsoring organization or committee has "established" another.

The Commission should also focus on the role which often can be played by organization or committee personnel, and not just by the organization or committee itself. Under the proposed regulation, officers, members, or employees of one sponsoring organization or committee might contend that they would be free to spin off another entity with an identical political agenda so long as they were acting in their "unofficial" capacities and the first committee later disclaimed any formal involvement in their activities. These individuals might further contend that there should be no inference of affiliation even if they used special knowledge and expertise acquired through their association with the first committee in forming the spin-off organization, and even used committee resources. As discussed above, this was precisely the position taken in the RNIEC case.

^{27/} 51 Fed. Reg. at 27,190.

The Commission should revise its rules to make clear that such conduct is indicative of affiliation. Accordingly, we recommend that proposed subsection (G) be redrafted as follows:

"(G) Whether a sponsoring organization or a committee, or members, officers, employees, or agents of such entity, had an active or leadership role in the formation of another sponsoring organization or committee."

B. Consecutive Associations of Key Personnel

Proposed subsections (D) and (E) of 11 C.F.R.

§ 110.3(a)(3)(iii)^{28/} would codify the Commission advisory opinions which hold that affiliation may be demonstrated by evidence that a sponsoring organization or committee has members, officers, or employees in common or overlapping with another organization or committee.^{29/} We agree that simultaneous associations can provide strong evidence of the ability of one entity to influence or control another.^{30/}

^{28/} 51 Fed Reg. at 27,190.

^{29/} See, e.g., FEC Advisory Opinion 1975-143; FEC Advisory Opinion 1979-65; FEC Advisory Opinion 1975-35.

^{30/} See, e.g., FEC Advisory Opinion 1975-143 (in determining whether newspaper is "controlled" by a political committee, finding that "no control exists" would be inappropriate where, *inter alia*, volunteer Finance Chairman of one organization also functions as volunteer Treasurer of the second).

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We further believe, however, that such personnel ties need not be simultaneous in order to be indicative of affiliation. Consecutive associations of members, officers, or employees with two sponsoring organizations or political committees -- such as Rodney Smith's consecutive roles as Finance Director and Treasurer of NRSC and as Treasurer of RNIEC -- may be strong evidence that the first committee was actively involved in establishing the second. Because the language of proposed indicia (D) and (E) does not cover with sufficient clarity consecutive associations of members, officers, or employees with sponsoring organizations or political committees, we recommend that the Commission add a new subsection (H) to its regulation:

"(H) Whether a political committee or a sponsoring organization has any members, officers, or employees who were members, officers or employees of another sponsoring organization or committee."

C. Indirect Financing of a Political Committee

Proposed subsection (F), a revision of present subsection (E) of 11 C.F.R. § 110.3(a)(1)(iii), states that affiliation will be indicated where a sponsoring organization or committee "provides funds in a significant amount or on an ongoing basis to another . . . committee, such as through direct or indirect payments for administrative, fundraising, or other costs" ^{31/} While this language appropriately makes clear

^{31/}

51 Fed. Reg. at 27,190.

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that indirect financing is covered by the antiproliferation principle in 2 U.S.C. § 441a(a)(5), it incorrectly implies that such financing must involve some type of payment or passing of funds. This is not the case.

The Commission's General Counsel correctly concluded, in a Report analyzing a claim of affiliation between the Mondale for President Committee and the Mondale delegate committees, that

"[w]hile 'financing' in general terms refers to the flow of funds between the organizations, it does not exclude the efforts exerted by the establishing entity to arrange for contributions to be made to the other organizations."^{32/}

There, the General Counsel found indicative of affiliation the fact that contributions were made by single PACs to several delegate committees on the same day and in identical amounts. From this evidence, the General Counsel concluded that the Mondale campaign might have "directed contributors of PAC funds to the delegate committees."^{33/}

Common Cause recommends that the proposed regulation be redrafted expressly to adopt this less restrictive and more realistic definition of financing. The new criteria should clarify that financing can result from any indirect action whereby a

^{32/} In re Mondale for President Committee, Inc., MUR 1722, First General Counsel's Report at 13 (May 7, 1984).

^{33/} Id. at 13-14.

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sponsoring organization or a political committee provides for, arranges for, directs, or promotes the receipt of funds by a second entity. Subsection F thus should read:

"(F) Whether a sponsoring organization or committee provides for, arranges for, directs, or promotes the receipt of funds by another sponsoring organization or committee in a significant amount or on an ongoing basis, including, but not limited to, the receipt of direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 C.F.R. 102.6(b)(1)(iv) or 102.17."

D. Ability To Influence and Similar Contribution Patterns

Greater certainty would be achieved if the Commission's proposal were made more explicit in two important areas. First, the Commission should retain the existing reference to the ability to "influence" decisionmaking in its revised subsection (C) of 11 C.F.R. § 110.3(a)(1)(iii).^{34/} And second, it should retain evidence of "similar patterns of contribution" as an independent

^{34/} Currently subsection (C) asks whether a sponsoring organization or political committee has "[t]he authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity." 11 C.F.R. § 110.3(a)(1)(iii)(C) (emphasis added). The Commission's proposed subsection (C) would ask merely "[w]hether a sponsoring organization or committee has the authority or ability to hire, appoint, or demote the officers, employees, or members of another sponsoring organization or committee." 51 Fed. Reg. at 27,190.

indicium of affiliation.^{35/}

The Commission has long recognized that, in some instances, affiliation may be inferred from an ability to influence that falls short of the power to control.^{36/} This general principle continues to be reflected in the Commission's proposal. Thus, new subsection (B) expressly asks "whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring

^{35/} 11 C.F.R. § 110.3(a)(1)(iii)(D). Under its current proposal, the Commission is not foreclosed from considering these two factors as indicia of affiliation. The Commission has expressly stated that "[t]his list of indicia of affiliation is not meant to be exhaustive, but only illustrative of the things that could be taken into account in making an affiliation determination." 51 Fed. Reg. at 27,184. Moreover, these criteria are generally subsumed in the new, broader affiliation guidelines. Given the important role which these two factors can play in identifying affiliation, however, the Commission should expressly include these factors among the list of indicia of affiliation.

^{36/} In FEC Advisory Opinion 1979-56, for example, two corporations, both with political action committees, entered into a joint venture with each owning fifty percent of the stock of the new company. Of the thirteen members of the Board of Directors, each corporation nominated six, and the thirteenth was to be agreed upon by both. The position of Chairman of the Board would alternate between personnel of the two companies. Although neither party "own[ed] a controlling interest [in] . . . or operate[d]" the new entity, Dissenting Opinion of Commissioner Aikens and Vice Chairman Max L. Friedersdorf, the Commission found both corporations affiliated with the entity, since each had the "ability to influence" its actions, Majority Opinion. See also FEC Advisory Opinion 1978-39. But see FEC Advisory Opinion 1984-36 (managing partner of entity had no authority to influence the decisions of its officers where managing partner reported to board of directors, could take major action only with consent of governing board, and could vote stock only as directed by board).

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organization or committee through provisions of constitutions, bylaws, contracts, or other rules, practices or procedures."^{37/} But the language of proposed subsection (B) does not expressly encompass instances in which the ability to influence stems from an informal understanding or agreement between two groups.

Common Cause therefore recommends that the language of proposed subsection (C) should be revised to track the language of the previous version of this subsection. Following the form used in the Notice of Proposed Rulemaking, this could be accomplished by revising proposed subsection (C) to read:

"(C) Whether a sponsoring organization or committee has the authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decisions of the officers or members of an entity."

Similarly, Common Cause believes that a new subsection incorporating the language of current subsection (D), relating to "similar patterns of contributions,"^{38/} is warranted. The fact that two sponsoring organizations or committees received their contributions from the same sources^{39/} or made contributions to

^{37/} 51 Fed. Reg. at 27,190 (emphasis added).

^{38/} 11 C.F.R. § 110.3(a)(1)(iii)(D).

^{39/} See In re Concerned Pennsylvania Taxpayers Committee, MUR 490 (78), General Counsel's Report at 2 (Apr. 20, 1978); cf. In re Mondale for President Committee, Inc., MUR 1722, First General Counsel's Report at 13 (May 7, 1984).

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the same candidates has been properly viewed by the Commission as a telling indication of affiliation.^{40/} Records of contributions are publicly disclosed and provide accessible, objective evidence of affiliating conduct. The Commission's proposal needs to be revised to make clear that evidence of similar contribution patterns remains relevant to the question of affiliation. We therefore urge the Commission to retain the substance of existing subsection (D) as new subsection (I). In the new format, this subsection would read:

"(I) Whether there is a similar pattern in the contributions made to or by a sponsoring organization or committee and those made to or by another sponsoring organization or committee."

^{40/}

See, e.g., FEC Advisory Opinion 1976-104.

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III. Committees Established or Controlled by a Candidate

[To be added; see page 1, note 2.] *

Respectfully submitted,

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August 29, 1986
(To be supplemented)

* The following Supplemental Comments were filed September 5, 1986.

SUPPLEMENTAL COMMENTS OF COMMON CAUSE
ON NOTICE OF PROPOSED RULEMAKING^{1/}

11 C.F.R. § 110.3 TO § 110.6

III. Committees Affiliated With Candidates

In its Notice of Proposed Rulemaking, the Commission notes the growing number of candidates who are establishing political action committees ("candidate PACs") that make contributions to other candidates on the founding candidates' instruction. As the rulemaking notice states, "there may be circumstances under which a political action committee established by a candidate may be considered affiliated with his or her campaign committee for the purposes of the contribution limitations [in the FECA]."^{2/} The Commission has requested comments on the question of affiliation among candidate campaign committees and other political committees established by the same candidates.^{3/} The

^{1/} On August 29, 1986, Common Cause submitted comments regarding two issues, bundling of earmarked contributions and general criteria for affiliation between committees. These supplemental comments discuss a further question, committees affiliated with candidates. We were unable to file comments addressing this issue on August 29 because of a medical emergency in the family of one of Common Cause's counsel.

^{2/} 51 Fed. Reg. at 27,185.

^{3/} Id. at 27,184.

Commission is correct in focusing its attention on this major problem.

Presidential aspirants and other candidates for federal office are blatantly violating the FECA by forming their own PACs. These candidates are circumventing the FECA contribution limits applicable to candidate committees simply by not designating their PACs as authorized candidate committees.^{4/} Through the transparent device of candidate PACs, federal candidates are thus obtaining larger aggregate contributions from individuals and political committees than their campaigns may lawfully accept. This practice undermines the FECA's fundamental purpose of limiting contributions in order to prevent corruption and the appearance of corruption. In addition, the FECA's expenditure limits for publicly-financed presidential candidates are being evaded by expenditures through candidate PACs.

Committees that are "authorized" by a candidate, including his or her principal campaign committee, are limited to contributions of no more than \$1,000 from an individual or group and \$5,000 from a "multicandidate committee" for each election.^{5/} Accordingly, authorized campaign committees may obtain a total of

^{4/} See 2 U.S.C. § 432(e)(1)-(4) (1982).

^{5/} See 2 U.S.C. §§ 441a(a)(1)(A), (C), 441a(a)(2)(A), (C) (1982). Testing-the-waters "exploratory" committees are subject to the same contribution limits. 11 C.F.R. §§ 100.7(b)(1), 100.8(b)(1), 101.3.

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only \$2,000 from an individual and \$10,000 from a multicandidate committee during an election cycle (including a primary and a general election).

A political committee that is not affiliated with a candidate may receive up to \$5,000 from each contributor in a calendar year (\$10,000 per two-year House election cycle). If a candidate establishes a PAC that is allowed to have its own separate contribution limits, then the candidate's various committees can receive considerably larger total contributions from each contributor. The candidate can receive \$12,000, not \$2,000, from an individual during an election cycle, and \$20,000, not \$10,000, from a multicandidate committee during the same two-year period.^{6/}

The risk of corruption and improper influence on candidates increases if candidate PACs are permitted to operate outside the limits applicable to authorized campaign committees, thereby allowing candidates to receive considerably larger amounts from each contributor. Although these funds are

^{6/} Authorized candidate committees also may not make contributions as large as other political committees may make. An authorized committee may give no more than \$1,000 per election to another candidate's authorized committee. See 2 U.S.C. § 432(e)(3)(A), (B) (1982); 11 C.F.R. § 102.13(c)(2). A multicandidate committee, on the other hand, is free to give up to \$5,000 per election to a candidate and up to \$5,000 per year to any other political committee. See 2 U.S.C. § 441a(a)(2)(A), (C) (1982).

purportedly outside the FECA structure that governs fundraising and spending by candidates, the money is available to further the founding candidates' campaigns for office in direct or indirect ways.

These PACs are successful in fundraising precisely because the contributor knows that giving to the committee helps the candidate who founded it. Contributions to these committees build up the same kind of political credit with the candidate as if they had been given to authorized campaign committees.

Large amounts of contributions are being amassed by PACs founded by presidential aspirants, members of Congress, and others. For example, between January 1 and June 30, 1986, Senator Robert Dole's Campaign America raised \$1,456,481; Representative Jack Kemp's Campaign for Prosperity took in \$1,095,237; and Senator Edward Kennedy's Fund for a Democratic Majority raised \$654,061.^{7/}

Vice President George Bush, Representative Jack Kemp, and Rev. Marion G. (Pat) Robertson use a variety of entities -- which are neither authorized candidate committees nor "exploratory" committees -- to raise campaign contributions and make campaign-related expenditures to further or assess their prospects for the 1988 Republican presidential nomination.^{8/}

^{7/} See Campaign Practices Reports, Aug. 13, 1986, at 10.

^{8/} Mr. Bush uses his "Fund for America's Future" in this manner; Mr. Kemp, his "Campaign for Prosperity," "Michigan

[Footnote continued next page]

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Contributors, the press and the public are fully aware of the nature of these committees.^{2/} In addition to evading the

[Footnote continued from preceding page]

Opportunity Society," and "Fund for the American Renaissance"; and Rev. Robertson, his "Committee for Freedom" and "Freedom Council." Although Michigan Opportunity Society, Fund for the American Renaissance, and Freedom Council have not registered as political committees under the FECA, we submit that they are in fact operating as political committees because they receive contributions and make expenditures to further a presidential campaign. See 2 U.S.C. § 431(4)(A) (1982). This is an area that the Commission should investigate.

Numerous press accounts make clear that these entities are de facto candidate committees affording the candidates campaign funds in excess of the amounts permitted by the FECA. See "Kemp Opponent Files Campaign Complaint," N.Y. Times, July 18, 1986, at A28; "Robertson Sets Up in Michigan," Wash. Post, July 18, 1986, at A5; "Bush Tiptoes Closer to Admitting He's Seeking Presidency," Wall St. J., July 14, 1986, at 3; "Bush, Kemp Missed Goals in Michigan," Wash. Post, June 7, 1986, at A1, A4; "Fund-Raising Methods of Pat Robertson Council Questioned," Wash. Post, June 6, 1986, at A1, A12; "Evangelicals Take On GOP Regulars," Wash. Post, May 29, 1986, at A1, A6; "Churches Were The Way To Robertson's Recruits," Wash. Post, May 29, 1986, at A6; "Robertson Shows Strength in Michigan GOP Precinct Delegate Contest," Wash. Post, May 28, 1986, at A3; "High-Stakes Fund-Raiser Benefits Robertson," Wash. Post, May 17, 1986, at A6; "Kemp, Swiveling Right And Left in Speeches, Aims for Ultimate Goal," N.Y. Times, March 10, 1986, at A16; "Politicians Turn to Special Groups to Raise Funds While Avoiding Presidential Campaigning Laws," Wall St. J., March 7, 1986, at 46; "Vice President Picks Chairman for His PAC," Wash. Post, Jan. 10, 1986, at A5; "A Congressman Abroad: Kemp Visits Leaders In Europe to Bolster His Presidential Prospects," Wall St. J., Feb. 18, 1986, at 64; "'88 Candidates' New Tricks Stretch Federal Election Law," Wash. Post, Oct. 20, 1985, at A1, A18. Copies of these articles are attached as Exhibits 1 to 14.

^{2/} We agree with Commissioner Harris, who trenchantly observed in his dissent in FEC Advisory Opinion 1986-6, "Only persons just alighting from a UFO can doubt that activities [financed by candidate PACs] . . . which are engaged in over a period of many months, will promote the candidacy of the founding father."

contribution limits, these committees are making expenditures without intending to count them against the expenditure limits applicable to presidential candidates who accept public financing.^{10/}

Inexplicably, the Commission has let candidate PACs develop to the point where they undermine the statute the Commission is charged with enforcing.^{11/} Prompt, vigorous action is required to rectify the situation.^{12/}

The antiproliferation and affiliation rules are an important place to begin addressing the problems posed by candidate PACs. The relationship between a candidate's authorized committees and any other political committee that he or she establishes, finances, maintains, or controls is governed by the

^{10/} 26 U.S.C. § 9035(a), 2 U.S.C. § 441a(b)(1)(A) (1982).

^{11/} See, e.g., FEC Advisory Opinion 1986-6, in which the Commission decided that Vice President Bush's Fund for America's Future could be deemed an independent PAC, despite its campaign activity on behalf of the Vice President in Michigan. As Commissioner Harris wrote in his dissenting opinion: "In its rulings on unannounced presidential aspirants the Commission has, step by step, gotten itself into the absurd position that it refuses to acknowledge what everyone knows: that Vice President Bush is running for President and is financing his campaign through the Fund for America's Future, Inc."

^{12/} There is a serious legal question whether the FECA entirely prohibits candidates from establishing multicandidate PACs that further their campaigns. Section 432 of the FECA contemplates "principal campaign committees" and "authorized committees" through which candidates may conduct their campaigns -- but not multicandidate PACs. See 2 U.S.C. § 432(e) (1982).

plain language of the antiproliferation rule formulated by Congress in 2 U.S.C. § 441a(a)(5). Thus, under the statute, all such committees are affiliated and should be treated as a single committee for purposes of the FECA's contribution ceilings. The same is true of an individual's "testing the waters" exploratory committee^{13/} and any other committees he or she establishes, finances, maintains, or controls.

If properly construed, the Commission's existing regulations concerning affiliation, codified at 11 C.F.R. § 110.3, would also require that all contributions made to or by all of a candidate's committees, including candidate PACs, be treated as if they were made to or by a single committee.^{14/} The Commission's proposed changes in the affiliation regulations, discussed in the rulemaking notice and in Part II of Common Cause's comments, would govern affiliation between authorized candidate committees and candidate PACs. Under the general criteria in the existing regulations^{15/} as well as in the Commission's proposed revisions,^{16/} for example, a candidate's authorized committee and

^{13/} See 11 C.F.R. §§ 100.7(b)(1), 100.8(b)(1) and 101.3.

^{14/} See, e.g., FEC Advisory Opinion 1978-12; see also 51 Fed. Reg. at 27,185.

^{15/} 11 C.F.R. §§ 110.3(a)(1)(i), 110.3(a)(1)(ii)(E).

^{16/} Proposed 11 C.F.R. § 110.3(a)(1)(ii), 110.3(a)(2)(v). See 51 Fed. Reg. at 27,190. The limits on the aggregate amount that may be received by all affiliated candidate committees should be the ceilings applicable to authorized campaign committees under 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(2)(A) (1982), as explained below.

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other committees established or controlled by that candidate would be "affiliated" -- and subject to a single contribution limit.

However, for the sake of clarity, a more specific provision should address the relationship between a candidate, his or her authorized committees (or exploratory committees), and any PAC that the same candidate founds or significantly influences in its solicitation, contribution, or expenditure activities. The Commission's proposal makes clear that all of a candidate's authorized committees are per se affiliated.^{17/} A similar per se rule should be added to provide for the affiliation of all committees that are closely tied to the same candidate -- and thus are "established or financed or maintained or controlled" by the same person^{18/} -- including those PACs the candidate has not designated as "authorized" committees. All such committees were established at the instigation of the candidate and, directly or indirectly, serve the candidate's interests in being elected to federal office. If they are not deemed to be affiliated with the candidate's authorized campaign committees, then circumvention of the FECA's contribution limits will continue unallayed.

^{17/} See 51 Fed. Reg. at 27,190 (proposed 11 C.F.R. § 110.3(a)(1)(i)).

^{18/} 2 U.S.C. § 441a(a)(5) (1982).

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An appropriate per se rule could be added to the proposed regulations by renumbering what is currently subsection (ii) of proposed section 110.3(a)(1) as subsection (iii), and inserting the following new subsection (ii):

"All political committees authorized, established, financed, maintained, or controlled by the same candidate, including any committee with which the candidate has a relationship that gives him or her the authority or ability to influence the decisions of such committee."

Contributions to candidate PACs should be aggregated with, and treated as, contributions to the candidate's authorized campaign committees for purposes of the FECA's contribution limits. Thus, no person may contribute more than an aggregate of \$1,000 per election, and no multicandidate committee may contribute more than an aggregate of \$5,000 per election, to all of a candidate's committees. Similarly, contributions to any PAC formed by an individual who is "testing the waters" should be aggregated with contributions to the individual's exploratory committee.^{19/}

^{19/} Contributions made by candidate PACs should also be subject to the affiliation rules. The applicable limit on contributions by affiliated candidate committees to other candidates should be the \$1,000 limit the FECA specifies for contributions by one candidate committee to another candidate committee. See 2 U.S.C. § 432(e)(3)(A), (B) (1982); 11 C.F.R. § 102.13(c)(2). The applicable limit on aggregate contributions by affiliated candidate committees to noncandidate committees should be the \$1,000 or \$5,000 limit specified in 2 U.S.C. § 441a(a)(1)(B)-(C) or (2)(B)-(C), as appropriate, depending on whether a "multicandidate political committee" as defined in the FECA is among the affiliated candidate committees.

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Respectfully submitted,

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Counsel for Common Cause

September 5, 1986

APPENDIX 3D

BEFORE THE
FEDERAL ELECTION COMMISSION

COMMON CAUSE	)	
2030 M Street, N.W.	)	
Washington, D.C. 20036	)	
(202) 833-1200,	)	
	)	
Complainant,	)	COMPLAINT
	)	
v.	)	
	)	
NATIONAL REPUBLICAN SENATORIAL	)	
COMMITTEE,	)	
	)	
Respondent.	)	

COMPLAINT OF COMMON CAUSE

1. This Complaint charges that the National Republican Senatorial Committee ("NRSC") has violated and is violating the Federal Election Campaign Act, 2 U.S.C. § 431, et seq., as amended ("FECA") by making contributions to Senatorial candidates in excess of its contribution limits.

PARTIES

2. Complainant Common Cause is a nonprofit membership corporation organized under the laws of the District of Columbia. It has approximately 264,000 dues-paying members in the 50 states and the District of Columbia. Common Cause promotes, on a non-partisan basis, its members' interest in open, honest and effective government and political representation. Common Cause seeks

to achieve this objective by making government more responsive to the needs and demands of citizens through government and election reform.

3. Respondent NRSC provides financial support to Republican Senatorial candidates. NRSC's chairman is Senator John Heinz (R-Pa.).

APPLICABLE STATUTES AND REGULATIONS

4. The FECA provides that the Republican or Democratic Senatorial Committee and the national committee of each political party respectively are subject to a combined contribution limit of \$17,500 for each Senate candidate during the year "in which an election is held. 2 U.S.C. § 441a(h).

5. The FECA limits contributions by any individual to a candidate for federal office, or to such candidate's authorized political committee, to \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A); accord 11 C.F.R. § 110.1(a)(1).

6. Section 110.6(d)(1) of the Federal Election Commission ("Commission") regulations provides that if a person or entity acts as a conduit for the earmarked contribution of another person, then the conduit's contribution limits are "affected" by passing on earmarked contributions "where the conduit exercises any direction or control over the choice of the recipient candidate." 11 C.F.R. § 110.6(d)(1). The Commission's

Campaign Guide restates this provision as follows: "If the conduit exercises direction and control over the contribution, the earmarked contribution must also be attributed to the contribution limitations of the conduit." Campaign Guide for Congressional Candidates and Committees at 28 (1985).

GROUND FOR COMPLAINT

Facts

7. NRSC has engaged in a massive violation of the FECA restrictions on the amounts it may contribute to Republican Senatorial candidates. It used direct mail to solicit contributions, received millions of dollars in checks made out to NRSC, deposited those checks, and then sent its own checks to Republican Senatorial candidates it chose. The candidates who have received the most money are among those involved in the closest Senatorial elections.

8. According to a Washington Post report dated October 20, 1986, NRSC sent a mail solicitation to certain potential contributors under the letterhead "Office of the Vice President" stating that "[o]ur Republican Senate candidates in Colorado, Alabama, Florida, and Missouri are on the verge of running out of money," but without identifying the candidates by name. The article stated that NRSC sent other solicitees different versions of the same letter discussing additional senatorial

ances. According to the article, the NRSC's appeal announced: "If you'll write out your \$100 check directly to the NRSC, they'll see to it that every penny of your generous contribution is evenly split and immediately delivered to each of these four candidates." (See attachment #1.)

9. On information and belief, in response to these solicitations, contributors sent checks to NRSC that designated NRSC as the payee. The contributors did not name any Republican Senatorial candidates or direct NRSC to forward all or any portion of the money to any such candidates.

10. On information and belief, when NRSC received these checks, it deposited them in its own account(s).

11. NRSC reported these contributions as having been earmarked by the contributors for certain specific candidates, even though it appears that all or even many contributors had not taken action to earmark them in this way. An article appearing in the Atlanta Constitution dated October 22, 1986 states that several of the individuals whose contributions to NRSC were listed in NRSC's campaign finance report as earmarked for particular candidates denied having earmarked their checks. For example, E.W. Dixon, whom NRSC listed as having contributed to the Denton, Mattingly, Abdnor, and Hutchinson campaigns, "said he was surprised that his . . . contribution to the NRSC was listed as earmarked," and noted that "I don't know Mattingly from

Adam's old fox.'" Mrs. Katherine Eberhard of Grand Rapids, Michigan, whom NRSC listed as giving \$90 to candidate Henson Moore of Louisiana, echoed this sentiment:

"'I wouldn't send to any person -- never -- unless I knew them . . . I live in Michigan . . . No way I would have sent money to Louisiana to Senator Moore or whoever he is.'"

(See attachment #2.)

12. Reports filed by the NRSC for the period January 1, 1985 through September 30, 1986 disclose that, as of September 30, 1986, 31 of the 34 Republican Senatorial candidates had received from NRSC \$15,000 or more of the \$17,500 NRSC was allowed to contribute to them under 2 U.S.C. § 441a(h).

13. The NRSC's October 15, 1986 quarterly campaign finance report (July 1 - September 30, 1986) also discloses that NRSC made approximately \$3.5 million in additional contributions to Republican Senatorial candidates during this period, beyond those referred to in paragraph 12. (This \$3.5 million figure does not include so-called "bundled" contributions where NRSC forwarded checks from individuals made out directly to the candidates.) According to NRSC's campaign finance report for this period, for example, NRSC gave Republican Senate candidates in Alabama (Senator Denton), Colorado (Mr. Kramer), Florida (Senator Hawkins), and Missouri (Mr. Bond) contributions of this kind

totaling \$388,445, \$401,005, \$295,105, and \$158,915, respectively during the July 1, 1986 - September 30, 1986 period. NRSC's total contributions of this kind during the election cycle from January 1, 1985 through September 30, 1986 was \$4,005,862. (See attachment #3 for the NRSC contributions of this kind to each Republican Senatorial candidate during this election cycle.)

Violations

14. In making the contributions discussed in paragraph 13, NRSC disbursed its own money and was not acting as a conduit for individual earmarked contributions. The contributions were not, in fact, earmarked; the checks were made out to NRSC; and NRSC deposited those checks in its own account(s) before making any disbursements. NRSC's disbursements were, therefore, FECA "contributions" by NRSC to those candidates. When those contributions exceeded the \$17,500 limit, NRSC violated 2 U.S.C. § 441a(h) in each instance.

15. Even if NRSC is not viewed as having contributed its own funds but as having acted as a conduit for earmarked contributions of others, NRSC's actions still violated 2 U.S.C. § 441a(h). The Commission's regulations have made clear that a conduit's contribution limits would be "affected" by passing on earmarked contributions "where the conduit exercises any direction or control over the choice of the recipient candidate."

"Direction" and "control" are independent criteria; there is no need to demonstrate "control" as long as the intermediary exercises "direction" over the choice of the recipient.

11 C.F.R. § 110.6(d)(1).

16. In this solicitation, NRSC has exercised both direction and control over the choice of recipient of the contributors' funds. Unlike the situations in advisory opinions in which the Commission has declined to attribute "bundled" contributions to an intermediary, see, e.g., AO 1980-46 (NCPAC), the individuals' contribution checks here were made out to NRSC, not to the candidate; and NRSC itself wrote out its own checks to the candidates. Once NRSC received the individuals' checks, the power to direct the funds to Senatorial candidates rested exclusively with NRSC. NRSC determined when, to whom, and in what amount the contributions would be directed to the candidates. As noted above, at least some contributors were unaware of (and surprised about) which candidates received the money they gave to NRSC.

17. In these circumstances, NRSC's transfers to the candidates are "contributions" to those candidates and should be attributed to NRSC's contribution limits. See AO 1986-4 (Armstrong World Industries); In re AOR 1976-92 (Boeing Civic Pledge Program). Since NRSC's total contributions to Republican Senatorial candidates, including those discussed above, exceeded

its \$17,500 contribution limit per candidate under § 441a(h), NRSC violated the FECA in each instance.

18. In addition, NRSC's overall scheme indicates its "direction" of the contributions in question. NRSC designed its solicitation letters and mailed them in ways to raise the maximum amount of money for use in races that are among the closest elections. Examination of NRSC's strategy and procedure should disclose that it is not mere happenstance that NRSC directed so much money to Republican candidates who were in the closest, not the easiest, Senatorial races. (See attachment #4.)

19. NRSC's actions here -- soliciting and receiving contributions for use in making contributions to candidates -- is akin to the traditional activity engaged in by PACs. The FECA does not permit a political committee to circumvent its contribution limits merely by announcing to solicitees its plans to make contributions to certain candidates and its intention to split contributions received from solicitees equally among candidates unless instructed to do otherwise. Indeed, if such a practice were permissible, all PACs could avoid their contribution limits by engaging in such a charade and the FECA's contribution limits would be meaningless.

20. Moreover, if NRSC is viewed as having acted as a conduit which directed and controlled the contributions, NRSC's program may be facilitating or encouraging widespread violations

of the \$1,000 contribution limit for individuals. As the Atlanta Constitution article demonstrates, at least some of the individuals in question were unaware that NRSC had charged them with making contributions to particular candidates. Conceivably, these individuals could already have made, or might later make, the maximum allowable contributions directly to the same candidates. NRSC, in its solicitation, apparently did not attempt to prevent such violations of the FECA from occurring.

RELIEF

21. Common Cause respectfully urges the Commission to conduct a prompt and thorough investigation into the allegations in this Complaint and declare that the NRSC has violated the FECA and Commission regulations.

Respectfully submitted,

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October 28, 1986

Campaign Skirts Rules by 'Bundling' Contributions

By Thomas B. Edsall
Washington Post Staff Writer

The National Republican Senatorial Committee (NRSC) last week filed a 59,000-page quarterly report that sets a record for length and establishes a new standard for political parties seeking to skirt federal campaign laws restricting contributions.

The committee, which has "maxed out" by giving the highest amounts allowed under law to key Senate candidates, channeled an additional \$6 million to GOP candidates using controversial "bundling" techniques.

"This is completely within the limits of the law," said David Narsavage, spokesman for the NRSC. The special program was "designed to give our contributors complete flexibility," he said, contending that there was no intent to evade legal limits on the amount the committee can give to individual Senate candidates.

Fred Wertheimer, president of Common Cause, countered: "What's going on here is ludicrous. This is a direct evasion of the limits that are in federal campaign law."

Federal campaign law limits the amounts political parties can give to Senate candidates under a formula keyed to population. In New York,

the parties can give each candidate about \$1 million, while in small states, the maximum is \$104,000. A central purpose of these restrictions is to keep campaign spending down.

The NRSC, however, raises far more money than it can give to candidates, and it has devised a growing array of techniques to channel additional cash to its favored candidates.

The Federal Election Commission (FEC), for example, has permitted to NRSC to "bundle" contributions to candidates: Loyal contributors were persuaded to send the NRSC checks made out to specific candidates, which the committee then passed on to the candidates.

This ruling was protested by Democrats and Common Cause. "The purpose of bundling is transparent. It is to avoid [illegal] contribution limits," Common Cause wrote in seeking revised FEC regulations. The group pointed out that in 1984, the NRSC transferred well over \$200,000 to each of three Senate candidates.

This year, the GOP Senate committee has taken the bundling process a step further. Narsavage refused to provide copies of the new program's solicitations, but other sources supplied a sample of a mailing under the letterhead "Office of the Vice President," in which Vice President Bush tells the reader:

"Our Republican Senate candidates in Colorado, Alabama, Florida, and Missouri are on the verge of running out of money A shift of just four seats will give control back to the Democrats If each of these four candidates don't raise at least \$236,500 in the next 21 days—they'll lose Your action—or inaction—now will quite literally mean political life or death for each of these candidates."

The candidates in these states are not named, and the states are changed in different versions so that all the tight contests are covered.

Readers are not asked to write checks to the individual candidates, as is the normal "bundling" practice, but instead they are told: "If you'll write out your \$100 check directly to the NRSC, they'll see to it that every penny of your generous contribution is evenly split and immediately delivered to each of these four candidates."

The letter appeared to conflict with an assertion by Narsavage that contributors "are not directed" to give to specific campaigns. He said that the GOP committee provides a list of important races and provides options allowing the contributors to "give money to some or all or none" of the campaigns. "We would be in violation of the law" if specific direction were given, he said.

ATLANTA CONSTITUTION

October 22, 1986

Republican group's gifts to Mattingly not listed

Senator's finance report didn't include donations

By Andrew Mollison

Journal Constitution Washington Bureau

WASHINGTON — Sen. Mack Mattingly's latest campaign finance report fails to list hundreds of small contributions that were raised for him by the National Republican Senatorial Committee from July through September.

The donors' names appear scattered among thousands of others in a 59,000-page report filed last week by the NRSC. The document, the biggest in the history of campaign reporting laws, lists contributions that the NRSC claims were earmarked for Mattingly or other GOP Senate candidates by the donors.

Several other Republican senators added the NRSC donor list to their most recent finance report, but Mattingly did not. The omission makes it harder to determine how much money he received from people who live outside Georgia.

A spokesman for the Federal Election Commission, while declining any comment on Mattingly's case, said that federal law requires Senate candidates to report the source of every dollar received from or through any committee for his re-election campaign.

"If it's an earmarked contribution, the identity of the person must be given no matter what the amount," said Fred Eiland of the FEC.

In reporting larger contributions raised by the NRSC, Mattingly's campaign did list individual givers but failed to disclose that those contributions were funneled through the NRSC.

Mattingly campaign spokesman Richard Moore said that in earlier reports the campaign filed even more information than it had to. He said the "huge volume" of contributions received by Mattingly between July 24 and Sept. 30 accounted for the failure to do so this time.

"Whatever information that would be required that was not included in the last report will be done in an amended report," Moore said. He said he didn't know how much Mattingly received from the

NRSC in earmarked funds.

The NRSC legally can spend no more than \$376,700 on Mattingly's behalf and directly gave him only \$17,500. But it also can serve as a "conduit" for funds from individuals who earmark their contributions for a particular candidate. That doesn't count against the committee's limits.

Telephone interviews with some of the contributors listed on the early pages of the NRSC report raised the question of whether the funds really were earmarked for particular candidates.

"I don't know Mattingly from Adam's old fox," said E.W. Dixon of Tulsa, Okla., who was listed in the NRSC report as a contributor to Mattingly's campaign.

Dixon said he was surprised that his \$120 contribution to the NRSC was listed as earmarked for \$30 each to Sens. Mattingly, Jeremiah A. Denton of Alabama and James Abdoor of South Dakota and Republican challenger Asa Hutchinson of Arkansas.

Charles S. Pope of San Francisco denied that he had earmarked his \$440 check to be split evenly between the same four Republicans, although it was listed that way in the NRSC report.

"I wouldn't send to any person — never — unless I knew them," said Katherine Eberhard of Grand Rapids, Mich., who was listed as giving \$90 to Republican Senate candidate Hensen Moore in Louisiana.

"I live in Michigan," she said. "No way I would have sent money to Louisiana to Senator Moore or whoever he is."

The NRSC says it sent out a series of fund-raising letters, over the names of such prominent Republicans as Vice President George Bush, which promised that any money raised through the letter would be split among specified candidates.

"I never read anything like that," Mrs. Eberhard said.

Attachment #3

NRSC CONTRIBUTIONS TO CURRENT REPUBLICAN SENATE CANDIDATES
LISTED BY NRSC AS "EARMARKED" CONTRIBUTIONS

January 1, 1985 - September 30, 1986

<u>Candidate</u>	<u>NRSC Contributions</u>
James Abdnor (SD)	\$644,125
James Santini (NV)	462,479
Ken Kramer (CO)	401,005
Jeremiah Denton (AL)	388,445
Henson Moore (LA)	319,108
Paula Hawkins (FL)	295,105
Richard Snelling (VT)	294,878
Asa Hutchinson (AR)	219,766
Ed Zschau (CA)	212,457
James Broyhill (NC)	170,473
Mack Mattingly (GA)	166,965
Christopher Bond (MO)	158,915
Steve Symms (ID)	46,331
Mark Andrews (ND)	45,814
Henry McMaster (SC)	38,406
John McCain (AZ)	20,180
Don Nickles (OK)	19,147
Robert Dole (KS)	16,030
Robert Kasten (WI)	14,233
Alfonse D'Amato (NY)	10,210
Judy Koehler (IL)	10,100
Arlen Specter (PA)	8,495
Slade Gorton (WA)	7,155
Thomas Kindness (OH)	6,816
Dan Quayle (IN)	4,675
Frank Murkowski (AK)	4,635
Charles Grassley (IA)	4,335
Warren Rudman (NH)	4,015
Linda Chavez (MD)	3,900
Robert Packwood (OR)	3,620
Roger Eddy (CT)	1,784
Jake Garn (UT)	1,150
Jackson Andrews (KY)	1,110
Total:	\$4,005,862

THE WALL STREET JOURNAL

October 24, 1986

GOP Panel's Bypass of Federal Aid Cap Totals \$6.6 Million for Senatorial Races

By Brooks Jackson

Staff Reporter of THE WALL STREET JOURNAL

A new tally shows the National Republican Senatorial Committee has quietly funneled nearly \$6.6 million extra into the coffers of GOP Senate candidates, using a technique that effectively nullifies federal limits on financial aid parties may provide.

The tabulation by The Wall Street Journal shows the GOP group is directing most of the extra money to relatively small states with tight races, where it could possibly prove decisive and help the party retain its narrow Senate majority. The states include Nevada, Alabama, Colorado and Vermont. In South Dakota, the senatorial committee's additional aid amounts to \$1.85 for every person of voting age.

The money is in addition to the \$12 million that federal law allows parties to spend for their Senate candidates this year. Financially strapped Democrats say they'll only manage about half that. Republicans, getting around the limits, may effectively give double that amount. One GOP fund-raiser said yesterday the GOP senatorial committee expects the \$6.6 million, the total given through Sept. 30, to grow to perhaps \$13 million or more by Election Day.

The National Republican Senatorial Committee's executive director, Tom Griscom, wouldn't comment on the Journal's tabulation or say how high the total might go by Election Day.

The unprecedented size of the committee's limit-skirting operation, and the efficient way in which the party has been able to control the destination of the extra money, is shown by this newspaper's tabulation of thousands of transactions reported by the GOP senatorial committee to the Federal Election Commission. The committee has refused to provide totals. The technique used to get around the

Big Bundle

Contributions funneled to Republican Senate candidates by National Republican Senatorial Committee through "bundling"

Abdnor (S.D.)	\$ 951,554
Santini (Nev.)	738,804
Denton (Ala.)	554,768
Hawkins (Fla.)	524,029
Kramer (Colo.)	508,916
Moore (La.)	492,700
Snelling (Vt.)	453,818
Zachau (Calif.)	414,436
Bend (Mo.)	310,850
Hutchinson (Ark.)	258,816
TOTAL (all candidates)	\$6,589,864

Note: Partial listing

Source: FES/ tabulation

party limits is called "bundling" or, in legal language, earmarking. The committee asks its donors to designate their gifts for specific candidates rather than for the unrestricted use of the party, then passes on the donations. The committee says this is permitted by current regulations of the Federal Election Commission.

However, the GOP senatorial committee's operation goes far beyond anything seen previously. The self-styled citizens lobby Common Cause said it will file an official complaint about it.

Common Cause president Fred Wertheimer said the committee's actions "constitute a blatant violation of the party contribution limits in the law. . . . This is a classic example of the kind of flagrant abuse that can occur when people conclude they don't have to worry about the laws being enforced."

The bundling operation is giving the GOP enormous leverage in smaller states, where federal limits, which are based on population, are low and where television and radio advertisements are much cheaper than in grants like California and New York. For example, the senatorial committee has reported passing on \$931,554 to the campaign of Sen. James Abdnor in South Dakota, which is nine times more than the federal limit on financial aid to the party.

GOP candidates are also the primary beneficiaries of an unprecedented bout of independent spending by political-action committees run by major lobbying groups. For example, a PAC committee called Auto Dealers and Drivers for Free Trade, which is financed by U.S. dealers of Japanese automobiles, just reported buying \$400,000 in advertising for GOP Sen. Paula Hawkins of Florida. It is one of the biggest single independent campaigns ever undertaken by a trade group, and the first one ever by the Japanese car dealers' PAC.

In Colorado, the National Association of Realtors reported pouring \$223,000 into radio, television and print advertising on behalf of GOP Rep. Ken Kramer, who is in a nip-and-tuck battle with Democratic Rep. Timothy Wirth for an open Senate seat. The PAC also reported spending \$243,000 in North Carolina for a targeted campaign of television and print advertising for GOP Sen. James Broyhill. Both the Colorado and North Carolina races are close, and the Realtors are hoping their shadow campaigns will prove decisive.

PAC giving isn't only to Republicans, of course. The biggest independent PAC effort this year is on behalf of a conservative Democrat, Rep. James Jones of Oklahoma. Realtors are spending an estimated \$450,000 to back his uphill bid against GOP Sen. Don Nickles.

Also, a tally released yesterday by Common Cause shows PACs gave \$15.4 million to Democratic Senate candidates and \$18.6 million to Republicans in the 21 months ended Sept. 30. The total given to both sides was 62% higher than for the similar period in the 1984 Senate elections. Common Cause said. That counts only direct donations; a PAC may give only \$5,000 per election directly to any one candidate.

Independent spending by PACs, which escapes these limits, is growing even more explosively. New wads of money are showing up almost every day as PACs file new reports. The American Medical Association just reported spending \$75,436 to buy broadcast advertising time to support GOP Sen. Robert Kasten in Wisconsin.

VERIFICATION

The undersigned counsel for complainant Common Cause swears that the statements in this complaint are based on the sources indicated, and, as such, are true and correct to the best of her information and belief.

Adrienne Masters
Adrienne Masters

District of Columbia ss
Subscribed and sworn before
me this 2nd day of October,
1986.

Shirley J. Woodard
Notary Public

My Commission Expires: 9-30-90

APPENDIX 4A

JOHN C. STERN'S MISSISSIPPI CHAIRMAN

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FRANCIS J. SULLIVAN STAFF DIRECTOR
 J. KEITH KENNEDY MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
 WASHINGTON, DC 20510-6025

APR 27 1987

April 23, 1987

Mr. Joseph J. Fanelli, President
 Business-Industry Political Action Committee
 1747 Pennsylvania Ave. NW, Suite 250
 Washington D.C. 20006

Dear Mr. Fanelli:

Thank you for taking the time out of your busy schedule to testify before the Rules Committee today. Your testimony was helpful and enlightening.

Due to time constraints I was unable to question you as thoroughly as I might otherwise have liked to. Enclosed are a number of questions I would appreciate your written response to for the Record.

As you know, the Committee plans to begin mark-up the middle of next week and therefore your response as soon as possible would be appreciated.

Sincerely,



DENNIS DeCONCINI
 United States Senator

DDC/LSI

QUESTIONS FOR JOSEPH J. FANELLI, PRESIDENT
BUSINESS-INDUSTRY POLITICAL ACTION COMMITTEE

Question #1

One option you have offered is a bi-partisan national commission to review the campaign financing issue. I have to disagree with you. Too often we in the Congress have avoided dealing with real issues by setting up commissions and frankly that's a cop out. We know there are problems and I think we have a pretty good idea what those problems are. In reality, what can a commission tell us that we don't already know.

Question #2

You've expressed concern about the possible pop-up of independent expenditures if there were limits on PACs. Would your view change if there was an effective way of restricting independent expenditures or making them less attractive?

Question #3

In your statement you say that PACs "allow ordinary citizens to pool their contributions with other of like mind and to take a more active and responsible role in political affairs through PAC involvement." Do I take by this that you determine which candidates your PAC will contribute to based on a poll of these ordinary citizens who contribute to your PAC?

Question #4

All available data indicate that PACs have been playing an increasingly important role in the funding of congressional campaigns, with PAC money accounting for some 31% of Senate candidate receipts in 1986, up from less than 16% in 1974. On the House side, this role has been even more pronounced, with PAC money constituting some 41% of receipts by 1986 House winners. According to Common Cause, 194 of the current House members got at least half their money from PACs in the 1986 elections, up from 63 in 1978.

Is there some level beyond which you might agree that PAC receipts do constitute an excessive share of overall campaign receipts? If not 25%, then how about 30%, or 40%, or 50%?

April 23, 1987



BUSINESS-INDUSTRY POLITICAL ACTION COMMITTEE
1747 PENNSYLVANIA AVENUE, NW / WASHINGTON, D.C. 20006-4897 / 202 • 833-1880

April 28, 1987

CHAIRMAN OF THE BOARD
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POLITICAL EDUCATION
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BIPAC
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Phoenix, Arizona

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C. J. SLAS
Chairman of the Board & CEO
Phelps Petroleum Company
Barnesville, Oklahoma

MOUNTAIN STATES REGION

W. E. TRUE, JR.
Partner
True Oil and Gas Company
Casper, Wyoming

SOUTHERN REGION

EARLE C. WILLIAMS
President
BDM International, Inc.
McLean, Virginia

Honorable Dennis DeConcini
United States Senate
328 Hart Office Building
Washington, D. C. 20510-6025

Dear Senator DeConcini:

I have your letter of April 23, 1987, and am pleased to provide you with the enclosed written responses to the several questions you posed with regard to election campaign financing reform. These responses are a supplement to my oral and written testimony submitted on behalf of the Business-Industry Political Action Committee (BIPAC) to the Senate Rules Committee on April 23.

BIPAC has been operating as an independent political action committee for twenty-four years and has given a great deal of thought to ways in which our present system could be improved.

We trust that BIPAC's recommendations will receive consideration by the full Senate Rules Committee during the mark-up of a bill and during the floor debate in the Senate.

I again want to thank Senator Ford as Chairman of the Rules Committee, and you as presiding Committee member during the April 23 hearings, for the opportunity to present BIPAC's views.

Sincerely,

Joseph J. Fanelli
Joseph J. Fanelli
President

Enclosures

cc: Senator Wendell H. Ford
Senator Ted Stevens
Senate Rules Committee
Sinclair Weeks, Jr.
Bernard C. Trueschler

Business-Industry Political Action Committee

April 28, 1987

Response to Questions Posed to BIPAC by U.S. Senator Dennis DeConciniResponse to Question #1

BIPAC's recommendation that a commission be appointed is based on the conviction that a comprehensive look at all aspects of our electoral process would be the preferred way to proceed rather than the narrow focus being given now just on the financing aspects of Senate election campaigns. Such a commission could include members of Congress, academicians, political scientists, etc. and could develop a report based on a comprehensive analysis of the whole system, such as was done by the Strauss-Laird Commission on Presidential elections. BIPAC's testimony includes several recommendations for changes in the present law.

Response to Question #2

BIPAC favors tightening up of criteria for permissible independent expenditures to obviate some abuses that have taken place in recent years. BIPAC does not engage in independent expenditures and would welcome another Supreme Court case to test the constitutionality of such expenditures. Even if independent expenditures were to be prohibited, BIPAC would still have serious reservations about placing a limit on the aggregate amount of PAC dollars a candidate would be permitted to receive because of the many problems that both the candidate and contributing PACs would face if aggregate limits were to be specified by law.

Response to Question #3

Contributors to BIPAC know the basic philosophy and objectives of BIPAC and how the organization goes about selecting candidates for support. They support BIPAC on the basis of the principles espoused by BIPAC over its twenty-four year history. BIPAC obtains input from supporters in every state but the organization does not poll the thousands of contributing members. The final decision as to which candidates are supported are made by our directors in the fifty states and by a six-member, bi-partisan BIPAC Congressional Candidate Review Committee. On a quarterly basis BIPAC reports to its supporters on candidates it supports and, subsequent to every election, a complete report is given on all contributions made and the amounts involved. Based on the record, BIPAC supporters may decide annually whether they wish to continue to support the organization. Parenthetically, is this not basically the way constituents decide whether to support their incumbent Senators, i.e., based on the incumbents' voting record and anticipated votes by the incumbents on emerging issues?

Response to Question #4

Of course, one may set an arbitrary acceptable percentage at any level one wishes. If it is perceived by the American people that PAC contributions are out of proportion to individual and political party contributions, then we recommend (as we have in testimony)

continued

that limits be increased for individuals; a tax credit be given for small contributions and provide increased limits on what parties may give to their candidates. This would be a better way of providing balance than by further restructuring PACs whose contributions have suffered at least a 50% attrition in value (what a dollar would purchase in a campaign) in the last twelve years. It is well to notice that:

- (a) the average corporate employee PAC has less than \$50,000 to contribute overall in a two-year election cycle;
- (b) based on results through the 1983-84 election cycle, corporate employee PACs contributed on the average only \$1,100 to Senate candidates and \$300 to House candidates. (Based on BIPAC's survey of corporate employee PACs.)

The present level of about 30% (final figures are not yet available from the FEC) is deemed by BIPAC's Board to be an acceptable level. As long as most campaign financing is derived from direct contributions to candidates from individuals and political party funding of its candidates, one could argue with reason that there is no "clear and present danger" to our electoral process. If PAC contributions should eventually approach the 50% level there might be cause to re-examine the role of PACs in the process.

It must be kept in mind, however, that all PAC dollars stem from contributions from individuals and that there is nothing inherently wrong in individuals opting to utilize PACs as a vehicle for their political contributions.

Senator DeConcini:

Please take another reading of BIPAC's testimony. BIPAC believes that the Senate could adopt rules to establish limits on campaign expenditures, or do so by Amendment to the Constitution. This would be far preferable than using tax dollars to fund campaigns for the purpose of establishing limits.

Also, the Senate should enact a law recinding the privilege that members of Congress have of converting campaign dollars to personal use.

Members of the House and Senate should be permitted only one campaign committee and candidates for the Senate should be restricted to campaign fund-raising only during the last two years of a six year cycle.

BIPAC supports S.625 which would provide disincentives for the expenditure of large sums by very wealthy candidates in their own behalf.

Finally, contributors to candidates for the Communist and Socialist Workers Parties should have to report to the FEC just as all other contributors and candidates do.

Other recommendations are included in BIAPC's testimony.

Thank you for this added opportunity to present BIPAC's views.

APPENDIX 5A

ADA

April 29, 1987

The Honorable Wendell H. Ford
Chairman
Rules and Administration Committee
173A Senate Russell Office Building
Washington, D.C. 20510

Dear Senator Ford:

Attached is the statement of the American Dental Association concerning S. 2, the Senatorial Election Campaign Act of 1987. This statement explains the Association's opposition to certain provisions of S. 2 and offers suggestions for appropriate modifications to the federal election laws.

We thank you for your consideration of our views.

Sincerely,

W. Allen
William E. Allen, D.D.S.
Director
Washington Office

American
Dental
Association



1115 15th Street, N.W.
Suite 1700
Washington, D.C. 20036
(202) 895-2400

April 29, 1987

The Honorable Wendell H. Ford
Chairman
Rules and Administration Committee
173A Senate Russell Office Building
Washington, D.C. 20510

Dear Senator Ford:

I am writing to express the views of the American Dental Association on election campaign reform and specifically on S. 2, the Senatorial Election Campaign Act of 1987.

The Association is vitally interested in sound election law. It is the legislative instrument that protects the rights of citizens to participate in their country's political system. The obligation of the Congress to solicit and analyze the views of all facets of society and to proceed in a deliberative manner in making campaign law is an especially acute one, in that any action taken will affect, for good or ill, those citizen-rights.

It seems to us inarguable that elections laws should serve to stimulate thoughtful citizen participation in election campaigns. They should encourage people to serve as campaign volunteers, to contribute money to candidates in a responsible manner and, ultimately, to make informed choices when they cast their ballots.

We are convinced that current law accomplishes these purposes, albeit imperfectly. For this reason, we believe that proposals to change current law in order to correct these imperfections, should be judged on their capacity to broaden responsible citizen participation in the electoral process.

By this measure, we find S. 2 in its concept wrong and in its major provisions impractical.

Public financing of election campaigns is antithetical to public involvement in those campaigns. It is only realistic to project that if the system proposed in S. 2 is to be fully funded, the tax-return check-off revenues would have to be supplemented substantially by general revenues, thus creating a funding source from which major

- 2 -

and qualifying minor party candidates would draw support, irrespective of the opinion or wishes of the public whose taxes created that source.

Today's voluntary system of public support for candidates would be replaced by an involuntary one.

Also, we believe it must be accepted that all Senatorial candidates would not choose to participate in the public financing system proposed by S. 2. Whenever that happened, and a candidate so choosing spent more than twice the spending limit for the campaign in question, the limitations for competing candidates would be to a considerable extent removed. In those situations -- and we expect there would be many of them -- controls on campaign costs would be lost, leaving only the new demand on an already overburdened treasury.

The treatment of political action committees under S. 2, in our view, only extends the bill's wrong concept of campaign financing.

PACs, we believe, serve a vital function in broadening citizen participation in the political process. Their capacity to contribute to election campaigns is directly dependent upon their ability to involve their citizen-members; to convince them that they have a stake in and responsibility for the electoral process, that election results directly affect them, and that it is their duty to be informed of the candidates' positions on the issues.

PAC contribution limits were established by the Congress over a decade ago. If those limits were reasonable then -- and we believe they were -- logic would dictate that they be raised to compensate for inflation over the intervening years. Instead, S. 2 would lower these limits, a measure that would have only one effect: discouragement of citizen participation in the funding of political campaigns.

Putting aside our disagreement with the concept of public campaign financing advanced in S. 2, it seems to us evident that regulation of the bill's candidate and independent spending limitations would be a practical impossibility. Certainly, without massive expansion of its resources, the Federal Election Commission would not be prepared to enforce this new law. Such substantial increases in regulating costs must be carefully weighed in this time of record federal deficits.

But beyond the capacity to regulate and the cost of regulation, S. 2 offers a system design that defies regulation. As one example, applicability of the spending limits to candidates accepting public financing is in large measure contingent upon the spending of non-participating competing candidates, which in amount, pattern, purpose, and time schedule is beyond the system's control. Candidates accepting public financing would be abiding by rules that the campaign experience of their opponents might cause to be suspended. And suspension might well occur at a time in the campaign in which the spending advantage to the non-participating opponent could not be overcome.

None of this is to say that responsible election law reform should not be pursued, we wholeheartedly support improvements to the current system. To this end, we offer the following observations.

- Many critics of the federal election system maintain that campaigns have become too lengthy and that fundraising places inordinate demands on the time of officeholders. In order to address these problems, contributions to candidates for the House and Senate from all sources (including PACs) should be restricted to the current election cycle, and a brief period following the general election for campaign debt retirement.
- Both campaign contributors and recipient candidates should be held fully accountable for the flow of campaign funds. Currently, some contributors may give to so-called "leadership" PACs which redistribute funds to other candidates. This practice potentially allows circumvention of the law's limits and raises other questions of undue influence. Such practices may also drive up overall campaign spending levels. These problems may be addressed by limiting each candidate for the House and Senate to a single authorized political committee which can make expenditures relating only to the office for which the candidate has declared. Candidates should not be permitted to control additional political committees for the purpose of raising funds to be disbursed to other candidates for elective office.
- Congress should also consider requiring candidates to eliminate the campaign treasury at the end of each campaign. No candidate should be permitted to

carry over unexpended campaign funds into the next election cycle. Similarly, any person who raises funds to run for federal office but who ultimately withdraws from the race should be required to dispose of any unexpended funds in a defined manner. No personal use by any candidate of unexpended funds should be permitted. A measure incorporating these restrictions might well help reduce campaign fundraising activities and campaign costs.

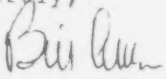
- The issue of PAC contributions is often confused with other charges of abuse in the system -- the excessive costs of campaigns, their negative nature, and over-reliance on simplified electronic media advertising. Before taking action aimed at any single element of campaign spending or at particular sources of campaign contributions, the Congress should establish a bipartisan commission to conduct a full-scale inquiry into how candidates spend their funds, and how campaign costs have been affected by inflation, communication expenses, and other considerations. The goal of the study should be to isolate specific spending-related problems that warrant Congressional attention. For example, such a study should help illuminate whether the costs of media advertising, direct mail and other campaign consulting services intensifies fundraising efforts, or whether fundraising escalates these costs.
- A recognized problem with the current system is the expenditure of campaign funds for goods and services not clearly related to campaign requirements. There have been instances of expenditures on such "campaign related" items as country club dues payment and automobile procurement. Therefore, the statutory definition of "campaign expenditure" should be refined to eliminate ambiguities and to prohibit certain practices that circumvent the intent of the law.
- Some charge that sources of campaign funds have fallen out of balance, with a disproportionately greater share coming from PACs and a correspondingly lesser share from individuals. Reducing the participation of PACs in the process is not an appropriate response, for the reasons cited above. Rather, Congress should consider increasing contribution limits for individuals in order to help diversify funding sources.

- Historically, candidate recruitment, consensus-building, citizen education, and the forging of broad coalitions out of disparate interest groups have been essential functions of the political party system. Today declining party identification threatens to diminish the role of political parties. One way to contribute to the renewal of parties would be to increase the limits on direct party contributions to candidates, as well as on coordinated expenditures by parties.
- To stop the continuing erosion of the value of campaign contributions, Congress should index contribution limits to the Consumer Price Index or another recognized indicator, extending a principle found in other parts of the federal election law.
- Full disclosure by both contributors and recipients of all funds spent in connection with federal elections is vital to the public interest. Spending and contributions, such as those utilized for party building funds and get-out-the-vote efforts, should be subject to strict reporting requirements.
- Congress should prohibit all fundraising practices that constitute intentional evasion of categorical contribution limits or evasion of full disclosure requirements. Measures to discourage so-called "bundling" would contribute to this end. With regard to such measures, it would be appropriate to refine the definition of who may be an "agent" of a federal candidate for fundraising purposes.
- In regulating independent expenditures, the primary goal should be full and understandable disclosure to the public that the expenditures were not authorized by any candidate or candidate's committee and are not restricted by federal contribution limits. Mandatory disclaimers and other disclosure measures should not be unduly burdensome or complex.
- Voluntary participation in the political process by citizens should be encouraged through the restoration of an appropriate tax credit for certain campaign contributions. Congress should permit a 100% credit for contributions totaling up to \$100. The credit should be available for contributions to candidates and to appropriate political committees.

- 6 -

We appreciate the opportunity to present our views and ask that they be made a part of the official record of the hearings.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Allen".

William E. Allen, D.D.S
Director
Washington Office

APPENDIX 5B

FINANCING CONGRESSIONAL CAMPAIGNS:
AN ANALYSIS OF CONGRESSIONAL CAMPAIGN FINANCING TRENDS,
1972-1986

Submitted by:

Herbert E. Alexander, Director
Citizens' Research Foundation, and
Professor of Political Science
University of Southern California

April 1987

Financing Congressional Campaigns

An Analysis of Congressional Campaign Financing Trends, 1972-1986

The remarkable growth in congressional campaign expenditures in the last 15 years has captured widespread attention. For some observers the 450 percent increase in spending from 1972 through 1986 (see Table 1 and Table 2) has caused great concern. In California alone, the 1986 primary and general election campaigns for a U.S. Senate seat cost more than \$30 million. Those disturbed by this trend often describe campaign spending as out of control and fear that many talented individuals are being priced out of running for office. They maintain that the ever larger sums of money required to mount effective campaigns, coupled with the system of strict contribution limits enacted in the Federal Election Campaign Act Amendments of 1974, favor wealthy candidates willing to help fund their own efforts or force candidates to turn to political action committees (PACs) whose contributions may be used to advance the PAC sponsors' specific legislative interests.

Other observers are less concerned by the increase in congressional campaign expenditures. Some argue that no objective standard is available by which to determine when expenditures have become too great. They point out that sums spent each year on product advertising dwarf those spent on political communications related to election campaigns. Others argue that when spending figures from 1972 through 1986 are adjusted for inflation, the actual increase in spending is far less than what is generally reported.

Changes in the sources of campaign funds also have aroused controversy. Some critics find the growing importance of PACs in congressional campaign financing a cause for alarm, claiming it represents a trend toward special

interest domination of Congress. Supporters of PACs, however, interpret the same growth as evidence of greater citizen participation in electoral politics. As PAC contributions to congressional candidates have increased, the proportion of campaign funds supplied directly to candidates by individual donors has declined. In particular, donors of modest amounts appear to play a role of diminishing importance in congressional campaign funding.

Open Seats, Challengers and Incumbents

Since 1972 growth in congressional campaign spending has far outstripped the rate of inflation as measured by the Consumer Price Index (CPI). As Table 2 indicates, however, when measured in constant dollars since 1972, spending by all congressional candidates in both primary and general election campaigns has risen at a rate that is substantially lower than what critics of campaign spending often cite.

Among major-party general election campaigns, those for open seats tend to be the most expensive; from 1972 through 1984, for example, the average cost of an open-seat House campaign quadrupled. Campaigns by challengers contesting seats held by incumbents are the least expensive; significantly, most challengers lose, often by large margins. Despite the comparatively low level of spending by challengers, the cost of challenger campaigns for House seats tripled from 1972 through 1984. Although incumbents do not mount the most expensive campaigns, incumbent campaign costs have risen more than any others: In 1984 House incumbents spent five times what their counterparts spent in 1972.

Among major-party Senate general election campaigns in 1986, the average cost of an incumbent campaign was \$3.3 million compared with \$3.1 million for open-seat campaigns and \$1.8 million for challenger campaigns.

In 1984 the average cost of an incumbent campaign was \$2.5 million; the average cost of an open-seat campaign was \$5 million, and a challenger campaign, \$1.1 million. Several factors may account for the comparatively heavy incumbent campaign spending in 1986, including the fact that a large number of incumbents seeking reelection represented populous states with traditionally high campaign costs and the fact that partisan control of the Senate was at stake, stimulating a number of intensely contested races.

Incumbents versus Challengers

The spending gap between incumbents and challengers remains substantial, although it varies by office sought and by party affiliation. In 1982, for example, Democratic House incumbents outspent their Republican challengers on average by a margin of \$243,587 to \$126,800; in 1984 the margin increased to \$280,000 to \$102,230. In 1982 Republican House incumbents outspent their Democratic challengers on average by a margin of \$281,215 to \$129,899; in 1984 the margin was \$279,112 to \$103,219. Among Senate candidates, Democratic incumbents in 1982 outspent their Republican challengers on average by a margin of only \$1,606,951 to \$1,516,015; in 1984 the margin was \$1,821,671 to \$1,349,064. Under another system of calculating campaign spending that includes party coordinated expenditures, in 1986 Democratic incumbents outspent their Republican challengers on average by a margin of \$2,642,830 to \$1,800,672. Republican incumbents in 1982 outspent their Democratic challengers on average by a margin of \$2,123,089 to \$979,886; in 1984 the margin was even greater: \$3,000,251 to \$639,407. Under the system of campaign spending calculation that includes party coordinated expenditures, in 1986 Republican incumbents outspent their Democratic challengers on average by a margin of \$3,640,276 to \$1,774,419.

PAC Contributions

Of the three sources of congressional campaign funds -- individuals, parties and PACs -- PACs have generated the most publicity. The number of PACs active in federal election campaigns has grown substantially, but the amounts PACs contribute to congressional candidates have increased at an even greater rate (see Table 3). From 1974 through 1986, the number of PACs grew by 584 percent; during the same period PAC contributions to congressional candidates increased by 1,020 percent. The total amount spent by congressional candidates during the period increased by 383 percent, from \$88.2 million to an estimated \$425 million.

Accordingly, since 1974 PACs have accounted for an increasing share of congressional campaign receipts (see Table 4). PAC contributions to Senate general election candidates as a percentage of their total receipts, that is, receipts in their primary and general election campaigns combined, have fluctuated during the period; in 1986 they represented 25 percent of those receipts, the highest percentage during the seven election cycles beginning in 1973-1974. The total amount contributed -- \$45.7 million -- represents a more than 70 percent increase over the amount contributed in 1983-1984. In contrast, PACs have contributed a steadily increasing percentage of House general election candidate receipts, reaching 36 percent in 1984. Preliminary figures indicate that the percentage increased slightly in 1986. Winning House candidates, for example, received 42.4 percent of their funds from PACs in 1986 compared with 41.4 percent in 1984.

Senate candidates rely less on PAC contributions because their longer term in office and their greater visibility permit them to attract campaign funds from a greater diversity of sources, including individual donors. The large number of closely contested Senate races in 1986, a number of them in

heavily populated states, and the high stakes in the elections -- no less than control of the Senate -- may account for the larger than usual percentage of PAC contributions to Senate candidates during the 1985-1986 cycle. The 34 winning Senate candidates received about 27.3 percent of their funds from PACs. Fourteen of the winners collected more than \$1 million each from PACs; some of them collected their PAC funds over a 6-year period. At least six losing candidates also collected more than \$1 million each from PACs. The total of 20 or more 1986 PAC millionaires represents a quantum leap over 1984 and 1982 when only two candidates in each cycle achieved that level of PAC support.

The percentage of congressional campaign receipts represented by PAC contributions, of course, varies with the category of congressional candidates examined. It is much greater for incumbents than for challengers. In the 28 senatorial races in 1986 in which incumbents sought reelection, for example, PACs contributed about \$35.9 million; 70 percent of that amount was given to the incumbents. PAC contributions also are greater for general election candidates than for candidates who fail to win their primary elections. When PAC contributions are measured as a percentage of receipts of all congressional candidates, including primary losers, the percentage is smaller than when only general election candidates or incumbents are examined.

Not only are the amounts contributed to congressional candidates by PACs and the percentage of congressional campaign receipts represented by PAC contributions controversial; so are the timing of some PAC donations and the bases upon which those donations appear to have been made. According to a Common Cause study of PAC contributions in the 1986 senatorial campaigns, for example, in seven Senate races in which Democratic challengers defeated Republican incumbents, there were 150

instances in which PACs supported the incumbent during the campaign but contributed to the challenger shortly after the election. The races in question took place in Alabama, Florida, Georgia, North Carolina, South Dakota and Washington. In North Dakota, for example, 39 PACs that had contributed \$127,475 to incumbent Republican Mark Andrews during the election campaign contributed \$72,760 to winning Democratic challenger Kent Conrad after the election. In Alabama, 31 PACs that had contributed about \$91,150 to Republican incumbent Jeremiah Denton before the election contributed \$43,200 to winning Democratic challenger Richard Shelby afterward.

PAC critics cite such behavior as evidence that PACs contribute not to support a candidate's philosophy or political party but to buy influence with officeholders. It is notable that six of the seven winning Democratic challengers in 1986 subsequently cosponsored the Senatorial Election Campaign Act, which, among other provisions, would limit the total amount of PAC funds congressional candidates may accept.

Contributions from Individuals

Although money contributed to candidates directly by individuals remains the principal source of campaign funds for congressional general election candidates of both major parties, as Table 5 indicates, individual contributions to House general election candidates of both parties have diminished in relative importance, particularly for Democratic candidates. In 1984 Democratic House general election candidates as a group received only a bare majority of their campaign funds from individuals. Moreover, Democratic House incumbents seeking reelection received only 45 percent of their campaign funds in direct individual contributions while relying on PACs to provide 47 percent of their funds. According to a Democratic Study Group

(DSG) report, 1984 marked the first time that any substantial category of candidates received a majority of its campaign funds from a source other than individual donors.

Although individual contributions measured as a percentage of campaign receipts traditionally have been a more important source of campaign funds for Senate candidates than for House candidates, in the 1985-1986 cycle, such contributions decreased notably in importance. They represented an estimated 65 percent of Democratic general election candidate receipts compared with 80 percent in 1983-1984, and 69 percent of Republican general election candidate receipts compared with 79 percent in 1983-1984.

The decline in the importance of individual donors as a source of campaign money has been especially notable among donors of modest amounts, that is, less than \$100 (see Table 6). Until 1982 small donors supplied a greater percentage of House general election candidate campaign funds than donors of \$100 or more; in the last two election cycles donors of large amounts have assumed a role of greater importance. Since 1974 donors of \$100 or more have played a more important role in Senate general election campaign fund raising; only in 1978 did donors of small amounts supply a greater percentage of Senate general election campaign receipts.

Self-Contributions and Loans

Counted among contributions from individuals are those contributions and unrepaid loans that some congressional candidates make to their own campaigns. Table 7 indicates the relative importance of such self-contributions since 1974. The incidence of substantial self-contributions is greater among non-incumbents, both among challengers and among candidates for open seats. Incumbents, even those who are wealthy and who may have

spent substantial personal funds to win their first elections, generally are able, once in office, to use their greater visibility and prestige to attract contributions from other individuals and from PACs. In the 1983-1984 election cycle, self-contributions accounted for 18 percent of all Democratic Senate candidate receipts and 6 percent of all Republican Senate candidate receipts. Such contributions accounted for 26 percent of the receipts of Democratic nonincumbents (due largely to Democrat John D. Rockefeller IV's \$11 million in loans to his successful open-seat race in West Virginia) and 18 percent of the receipts of Republican nonincumbents.

In the 1985-1986 cycle, self-contributions accounted for less than 1 percent of the money raised by Senate general election candidates. In the New York Democratic Senate primary, however, John Dyson reportedly spent almost \$6 million of his own money in a losing bid for the nomination. Dyson's spending exceeded the previous high for spending by a candidate in a Senate primary contest.

Party Contributions and Coordinated Expenditures

The Republican party has consistently provided greater financial assistance to its congressional candidates than the Democratic party. As Table 8 indicates, in all election cycles from 1974 through 1984, Republican party committees have contributed to and spent on behalf of their House general election candidates at least two and a half times as much as Democratic party committees have contributed to and spent on behalf of their House general election candidates. In some cycles Republican committees have contributed to and spent more than four times the corresponding figure for Democratic committees.

Republican party contributions to and expenditures on behalf of their Senate general election candidates in cycles from 1974 through 1984 exceed

similar Democratic party committee contributions and expenditures by a factor of at least 2.5 and as much as 3.75. Preliminary figures indicate that in Senate general election campaigns in the 1985-1986 cycle, Democratic party committees achieved parity with Republican committees when contributions and coordinated expenditures are expressed as a percentage of congressional campaign receipts. The total amount contributed and spent by Republican committees in those campaigns, however, exceeded the corresponding Democratic committee total by almost \$4 million: \$10.9 million to \$7 million.

The greater ability of the Republican party to support its candidates flows from its far more successful fund-raising results (see Table 9). Although Democratic party committees managed to close the fund-raising gap somewhat in the 1983-1984 election cycle, preliminary reports of party fund-raising results in 1985-1986 indicate that the gap has widened once again (see Table 9 and Table 10). Through October 15, 1986, Republican committees had raised more than five times the amount raised by Democratic committees. During the corresponding period in the 1983-1984 cycle, they had raised less than four times the amount raised by their Democratic counterparts.

Figures for party committee receipts and expenditures supplied by the Federal Election Commission represent only "hard money" raised and spent under FECA restrictions. They do not account for "soft money" raised outside FECA restraints but spent in ways intended to influence federal election results. These funds are raised from corporations and labor unions, which are not permitted to spend their treasury funds in connection with federal elections, and from individuals willing to give more than the federal law permits. They are spent to finance voter registration and turnout drives and to pay the costs of "generic" party advertising in which

candidates are not mentioned by name. Although most of the attention given to soft money has focused on presidential campaigns, the activities paid for with soft money clearly benefit congressional candidates as well.

Independent Expenditures

The impact of independent spending is difficult to measure. Such spending in congressional campaigns generated considerable publicity in 1980 when four well-known liberal senators targeted by independent spending groups suffered defeat. In 1982 congressional independent expenditures more than doubled compared with the previous election cycle; 80 percent of the expenditures were made in negative campaigns, that is, campaigns to defeat specific candidates. Only one of the 17 targeted candidates was defeated, however, and factors other than negative independent expenditures probably account for that result. By 1984 enthusiasm for independent congressional campaign expenditures appeared to have waned (see Table 11). Moreover, reports cast doubt on the efficacy of independent spending. They revealed that most of the expenditures reported by the largest independent spending committees in 1982 and 1984 -- all of them nonconnected, ideologically oriented PACs -- actually were used to finance direct mail fund-raising appeals and committee administration costs and not political advertising and other direct campaign activities.

Preliminary figures for the 1985-1986 congressional campaigns indicate some \$7.8 million was spent independently. The emergence of connected PACs -- those sponsored by parent organizations -- as major players in independent expenditure campaigns should be noted. Four of the nation's largest PACs -- the American Medical PAC, the Auto Dealers for Free Trade PAC, the Realtors PAC and the National Rifle Association Political Victory Fund -- spent more than \$5 million independently to support a number of House and

Senate candidates. Nearly all the candidates they supported with substantial spending lost, including several incumbents.

The amounts spent by independent spending committees on negative advertising in 1986 represent about 28 percent of the 7.8 million total. The leading spenders for such advertising included several nonconnected PACs. According to preliminary figures, the National Committee to Preserve Social Security PAC spent \$1.9 million independently, \$1.1 million of it to oppose candidates. The National Conservative Political Action Committee spent \$980,599, of which \$434,907 went to oppose candidates, and the Congressional Majority Committee spent \$100,487, all of it in opposition to candidates.

Conclusions

Some results of the most recent elections confirm traditional wisdom regarding election campaign spending, but other results call the conventional beliefs into question. There can be little doubt that serious, competitive congressional campaigns cost substantial sums of money. The sums spent in 1985-1986 merely verify what spending in election campaigns since 1971-1972 has established: a durable upward spiral well beyond increases in the Consumer Price Index.

In contrast to what some campaign critics claim, however, the results of many 1985-1986 Senate campaigns demonstrate that outspending one's opponent by no means assures electoral success. All but one of the nine Democrats who won Republican-held U.S. Senate seats raised and spent substantially less than their opponents. So long as the challengers raised sufficient funds to provide them with opportunities to communicate their personalities and basic messages, they were able to compete effectively

with more amply funded incumbents. Moreover, of the 10 Senate candidates who raised the most money -- seven Republicans and three Democrats -- six were defeated.

At first glance 1985-1986 House campaigns appear to demonstrate the opposite: that the candidates who spend the most win. Most House incumbents spent more than their challengers, and only five incumbents lost. In 33 of the 43 open-seat House races, the winners spent more than their opponents. Many of those races, however, took place in strong Democratic or Republican districts whose make-up gave the eventual winners an advantage that even heavy spending by their challengers probably could not have overcome. In the 17 open-seat races that were closely contested, nine winners raised less campaign money than their opponents, although in each case the winners raised substantial amounts.

Many 1985-1986 Senate contests also clarify an important reason for substantial campaign spending that often is overlooked by critics. Studies demonstrate that the closer the election contest, the greater the effect incremental increases in spending may have on election results. Given the closeness of many of the 1986 contests -- 11 seats were won with 52 percent of the vote or less -- candidates attuned to poll results indicating narrow margins of preference separating them from their opponents can hardly be blamed for having spent the extra dollars that might bring them victory.

Finally, the comparatively high spending figure in 1985-1986 congressional contests, including high levels of PAC contributions, undoubtedly will spur talk of election campaign reform. Election reformers, however, may be hard-pressed if they argue too strongly that access to large sums of money automatically confers advantage in election campaigns and thus should be more strictly controlled. The most recent election results, particularly

in Senate campaigns, argue against that position. They make considerably more difficult the prospect of achieving consensus on the shape of election reform.

Table 1
Congressional Campaign Expenditures, 1972-1986
(millions)

Election Cycle	Total	Senate	House
1971-1972	\$ 77.3	\$ 30.7	\$ 46.5
1973-1974	88.2	34.7	53.5
1975-1976	115.5	44.0	71.5
1977-1978	194.8	85.2	109.6
1979-1980	238.9	102.9	136.0
1981-1982	342.4	138.4	204.0
1983-1984	374.1	170.5	203.6
1985-1986 ^a	425.0	n/a	n/a

Source: Citizens' Research Foundation compilation based on FEC and other data.

^aCongressional Research Service estimate.

Table 2
Rate of Increase in
Congressional Campaign Expenditures, 1972-1984

Election Years	CPI	Percent Increase		Campaign Expenditures (in millions)
1972	125.3	-	-	\$ 77.3
1974	147.7	18	14	88.2
1976	170.5	15	31	115.5
1978	195.4	15	69	194.8
1980	246.8	26	23	238.9
1982	289.1	17	43	342.4
1984	311.1	8	9	374.1
1986	328.4	6	14	425.0 (est.)
1972-1986		162	450	

—Source: Citizens' Research Foundation compilations from FEC and other data.

Table 3
 Increase in the Number of PACs
 and in PAC Contributions to Congressional Candidates
 (dollar figures in millions)

	1974	1976	1978	1980	1982	1984	1986	1974-1986
Number	608	1146	1653	2551	3371	4009	4157	
\$ increase		88	44	54	32	19	4	584
PAC Contributions	\$12.5	\$22.6	\$35.2	\$55.2	\$83.6	\$105.3	\$140.0 ^a	
% increase		81	56	57	51	26	33	1020

Source: Federal Election Commission

^aEstimated

Table 4
 PAC Contributions
 as a Percentage of Congressional Campaign Receipts
 (major-party general election candidates)

	1974	1976	1978	1980	1982	1984	1986
House	17%	22%	24%	28%	30%	36%	n/a
Democrats	22	30	27	32	34	45	n/a
Republicans	12	19	23	26	28	33	n/a
Senate	11	15	13	19	17	18	25
Democrats	15	20	14	18	18	20	27
Republicans	8	13	13	24	20	20	23

Source: 1974 and 1976 figures calculated from Gary Jacobson, *Money in Congressional Elections* (Yale University Press, 1980) pp. 58-61, 78-81; 1978-84 figures calculated from FEC and Democratic Study Group data; 1986 Senate figures calculated from Common Cause data.

Table 5
Individual Contributions
as a Percentage of Congressional Campaign Receipts
(major-party general election candidates)

	1974	1976	1978	1980	1982	1984	1986
House							
Democrats	76%	65%	70%	66%	64%	54%	n/a
Republicans	78	68	69	68	66	62	n/a
Senate							
Democrats	84	77	84	81	81	80	65 ^a
Republicans	79	82	85	74	79	79	69 ^a

Source: 1974 and 1976 figures calculated from Gary Jacobson, Money in Congressional Elections (Yale University Press, 1980), pp. 58-61, 78-81; 1978-1984 figures calculated from FEC and Democratic Study Group data; 1986 Senate figures are estimates based on incomplete data.

^aEstimated

Table 6
Trends in Individual Contributions to
Congressional General Election Candidates, 1974-1984^a
(dollar figures in millions)

	1974	1976	1978	1980	1982	1984
House						
Under \$100	\$20.8	\$23.7	\$35.4	\$37.8	\$41.2	\$39.8
% of total	46	36	38	30	22	19
Over \$100	\$12.6	14.8	20.8	33.8	56.5	56.3
% of total	27	22	22	26	29	27
Senate						
Under \$100	\$10.6	11.1	29.2	20.7	22.9	36.0
% of total	38	28	42	25	18	23
Over \$100	\$10.8	15.8	21.4	31.7	45.6	59.7
% of total	38	41	31	38	37	38

Source: Democratic Study Group Report No. 99-22, "Troubling Trends in Election Financing" (October 22, 1985), pp. 31, 35.

^aPercentages are based on total receipts from all sources.

Table 7

Congressional Candidates' Own Contributions
as a Percentage of Total Campaign Receipts, 1974-1984
(general election candidates)

	1974	1976	1978	1980	1982	1984	1986
House	6%	11%	9%	10%	12%	6%	n/a
Senate	1	12	8	10	20	11	1

Sources: For 1974-1982, Richard P. Conlon, "A New Problem in Campaign Financing" (paper presented at the 1984 American Political Science Association annual meeting), p. 13; for 1984, FEC final report for 1983-1984 election cycle; 1986 Senate figure is an estimate based on available data.

Table 8
Party Contributions
as a Percentage of Congressional Campaign Receipts
(major-party general election candidates)

	1974	1976	1978	1980	1982	1984	1986
House							
Democrats	2%	5%	3 (3)% ^a	2 (2)%	1 (2)%	1 (3)%	n/a
Republicans	9	13	8 (11)	6 (9)	5 (10)	5 (13)	n/a
Senate							
Democrats	2	3	2 (2)	1 (4)	1 (4)	1 (6)	4 (9)
Republicans	12	5	2 (8)	2 (15)	1 (15)	1 (9)	2 (9)

Source: 1974-1976 figures calculated from Gary Jacobson, Money in Congressional Elections (Yale University Press, 1980), pp. 58-61; 1978-1981, 1978-1984 figures calculated from FEC data.

^aFigures in parentheses include both party committee contributions to congressional candidates and coordinated party committee expenditures on their behalf.

Table 9
Major-Party Federal Election Campaign Fund Raising
(millions)

	1977-1978	1979-1980	1981-1982	1983-1984	1985-1986 ^a
Democrats	\$26.4	\$ 37.2	\$ 39.3	\$ 98.5	\$ 37.7
Republicans	84.5	169.5	215.0	297.9	190.9

Source: Federal Election Commission

^aFigures through October 15, 1986.

Table 10

Major Party National Committee Receipts, 1984 and 1985

	Jan. 1, 1983 - Oct. 17, 1984	Jan. 1, 1985- Oct. 15, 1986	% Change
Democrats			
DNC	\$39,827,632	\$15,172,256	-62%
DSCC	8,229,876	11,480,591	+29%
DCCC	9,278,624	11,018,209	+15%
	-----	-----	-----
Total:	57,336,132	37,671,056	-34%
Republicans			
RNC	97,583,753	75,638,914	-23%
NRSC	73,546,055	79,808,159	+8%
NRCC	54,236,385	35,482,366	-35%
	-----	-----	-----
Total:	225,366,193	190,929,439	-15%

Source: Federal Election Commission

Table 11
Congressional Independent Expenditures

	1976	1978	1980	1982	1984	1986
Actual Amount	\$387,000	\$303,000	\$2,338,000	\$5,775,000	\$5,996,000	\$7,789,785
1976 Dollars	387,000	264,000	1,615,000	3,394,000	3,270,000	n/a
X Negative	n/a	25	61	80	44	28

Source: Federal Election Commission

APPENDIX 5C

Written Testimony of James E. Mills, Acting President
 Citizens Campaign Standards League
 Presented to the Committee on Rules and Administration, U.S. Senate
 April 22, 1987

Mr. Chairman and Members of the Committee, I am happy to present this testimony to the Rules Committee on the subject of election campaign reform, in general, and the Senate's bill, S.2, in particular. In so doing, I represent my views as a citizen concerned about government's accountability and responsiveness to the common good and as a Board member and founder of a development-stage movement known as the Citizens Campaign Standards League or "CCSL". An up-to-date description of the CCSL is attached as a part of my testimony to be included in the record of the Committee's hearings today.

My comments on S.2, a bill to provide for the public financing of Senate general election campaigns and to further limit political action committee ("PAC") contributions, reflect a different perspective. I believe dependence on legislative solutions such as S.2, under current conditions, is insufficient and may even be damaging to realizing the goals of bringing common sense to bear on our election campaign practices, increasing citizen participation, improving the quality of political dialogue, and helping to enhance government accountability and responsiveness. A more positive and comprehensive citizens' reform movement is necessary.

Currently, we treat election campaigns like product marketing games and government like just another service industry trying to satisfy market demand, often created by government itself. Over 80% of our adult citizens are dissatisfied with our campaign practices. They are not simply mediocre, they're downright disgraceful. Is it any wonder people don't vote and that those who do, usually do so reluctantly? To paraphrase the respected French constitutionalist, Michel Debri, a legitimate government is one which is perceived to be and in practice is responsive to the public's interest and reflective of its moral virtues. More than half of our citizens think our federal government and its elected officials are not sufficiently accountable and responsive. There is a sense among many that government isn't enhancing our security, it's worsening it. Tolerant democracy in the United States is under a great deal of pressure. What gives rise to these conditions?

The causes of the problem of insufficient political responsiveness and accountability and its correlate, citizen withdrawal, are much broader and deeper than the unlimited spending of concern to Senator Stevens, or the excessive influence of dominant special interests groups resulting from a campaign system dependent on large sums of money as Senator Byrd laments. The problem involves more than a campaign finance system which seems to require leaders to be overly self-centered and utilitarian at the expense of the public good upon which we are all ultimately dependent. Nor is the problem adequately

defined through the kinds of mechanistic analysis of political system deficiencies like those cited by Senator Cranston. These are symptoms of a much deeper problem.

Political scientist Walter Truett Anderson, in the opening chapter of his new book, To Govern Evolution, writes:

"The central political problem of our time is not that people in power do wrong things, or that some people have more power than others, or that there is a lack of clarity and honesty in political dialogue; all these are real and serious, but they are only dim reflections of a larger problem, which is that we literally do not know what we are doing. We have no concept of what politics is about that fits the reality of the present situation. Even though the air is thick with talk of paradigm shifts and predictions of a new global post-industrial civilization, we seem unable - or afraid - to grasp the truth of how the world has changed, and what it means to govern."

"This truth is both highly complex and quite simple: Politics is about evolution.... Today the driving force in evolution is human intelligence.... Even our own genetic future is in our hands, guided not by Darwinian abstractions but by science and medical technology and public policy. The world has changed; and the human species, which has wrought the change, is now being required to change in response to the conditions we have created."

"The change calls for a massive reappraisal of basic ideas...."

".... To say that we are not ready for evolutionary governance is equivalent to saying that a teenage child is not ready for puberty; the statement may be true, but it is not much help." (1)

What is most needed then are election campaign practices which better educate and involve citizens. S.2 does little, if anything, in this direction.

In addition to the positive impacts foreseen by advocates of S.2, there are other consequences which concern some of the bill's thoughtful opponents. S.2 can be viewed as:

1. a means to encourage PACS and wealthy individuals to compete with already weakened parties by becoming more actively engaged in candidate recruitment, independent campaigning, and primary period bundling of individual contributions.
2. a means of reducing PAC contributions to candidates while not reducing their access/influence since primary elections will continue to be financed significantly by PACS;

3. having little effect on improving the quality of political dialogue or citizen participation in adversarial electoral politics;
4. causing reduced demand for comprehensive disclosure statutes and regulations by creating the illusion that public financing eliminates the need when it is likely the need for strong independent spending and "soft" money disclosure provisions will actually increase.
5. a high risk approach to reform in the sense that, if it causes significant new problems, they will be more difficult to correct on a timely basis since it is in the form of law.

The potential effects cited above serve to demonstrate that legislative remedies such as S.2 are, at best, inadequate and unpredictable. They run the risk of creating the illusion of problem resolution while actually exacerbating it.

The sponsors of S.2 and its organizational advocates view S.2 as a significant incremental improvement. S.2 can also be seen as a symptom of the decline of our practice of civic republicanism and an abdication of our commitment to promoting the ethics and virtues underlying a strong and vital democratic republic. There is an assumption in S.2 that this decadence or abdication of civic virtue can be corrected through law. Yet such laws usurp citizen responsibility and thereby undermine our dignity. S.2 can be seen as a surrender of moral leadership in our practice of democracy to cynicism. Just as PACs allow their citizen contributors to surrender active participation in adversarial politics to so-called political mercenaries, S.2 allows citizens to escape from financial participation altogether in general elections in a kind of discipline from atop manner.

The French legal historian and sociologist, Jacques Ellul, persuasively argued that democracy and political accountability can only survive in a modern technological nation-state, regardless of its ideological foundation, by countering its inherent centralist planning, power usurping tendencies with independent movements and organizations which function to create tension with the state. The idea of depending on public interest lobbies to assure responsive and accountable law and a vital democracy, Ellul describes as a political illusion. The S.2 notion of establishing a major political financial system designed by its beneficiaries serves as a good illustration of Ellul's thesis. It usurps and centralizes power and yet is enthusiastically supported by well meaning public interest groups. On the other hand, political parties (whose leaders and policymakers are constituents and not elected officials) which are decentralized in their structure and operate in accordance with democratic principles can be cited as examples of what Ellul would call desirable tension creating devices. Likewise, the Citizens Campaign Standards League is a good example of an independent movement that can serve to provide a degree of

tension with the state and facilitate constructive change.

Lobbying organizations exist primarily to promote new legislation and influence the content of legislation promoted by others, i.e., they have an economic interest in solving problems legislatively. When moral virtue can no longer be relied upon to protect the rights of citizens, legislation may be justified. In this case, we may be misconstruing facts. I'm convinced our moral virtue is adequate in this area and only needs a more effective means for expression.

The Citizens Campaign Standards League is based on this conviction. The CCSL's approach is to establish enforceable campaign fundraising and spending standards by exercising our constitutional right to freely associate rather than through laws which could be found unconstitutional or bills purposefully designed to get around the Constitution, bills which may or may not be signed and if signed, might cause new, more resistant problems.

Employing the same constitutional provisions which allowed for the formation of political parties in the early 1800's, the Citizens Campaign Standards League has the potential of not only treating the symptomatic problems identified by those who have appeared before this committee, but also of truly invigorating participation and enhancing the quality of campaign dialogue. The Citizens Campaign Standards League ("CCSL") was formed as a process focused, non-partisan, non-lobbying unincorporated association aimed at creating a new, fundamental American political institution. It will not endorse or in any way support political candidates, promote specific political party affiliations or lobby.

The League is conceived as a grass-roots mass movement whereby citizens pledge - much like people register to vote - to consider voting only for candidates who adhere to the League's democratically set standards. The pledge is not to become effective until a critical number of registered voters have signed it, perhaps as high as 51% or as low as 20%. The pledge also has a "back door clause" which allows the pledge registrant to vote outside the pledge if he or she deems it in the public's interest. After all, this is America. Importantly, the "sign and wait" approach prevents the League from being cast as a "single issue" movement since campaign standards are a non-issue until enough pledges have been registered and, once the goal is achieved, they continue to be a non-issue since no candidate could win without adhering to the standards.

The League's Federal Election Standards, to be adopted by randomly selected delegates at the League's founding convention, if they remain at all close to the current draft, will:

1. eliminate direct PAC contributions to candidates;
2. increase voter constituent control over the

distribution of political money and thereby provide real incentive for activists to participate in local organizational politics;

3. set overall campaign spending limits and limits on broadcast advertising spending;
4. restrict broadcast advertising to the announcement of campaign sponsored meetings or events, the promotion of the viewing of or listening to a campaign purchased program or a program on which the candidate is appearing; and
5. increase voter registration and turn-out by making the system more accountable and responsive.

The Citizens Campaign Standards League concept is a very American, and elegantly simple approach to resolving significant problems in our practice of democracy. The respected liberal political scientist, James MacGregor Burns, has described this as "an exceptionally intelligent and imaginative and creative response to a very tough problem in American politics." Most importantly, focus group discussions and one-on-one interviews with more than 300 persons show virtually unanimous support. More sterile survey research shows at least 73% of the voters would sign the League pledge. James Sundquist, in his book Constitutional Reform and Effective Government suggests that changes of the magnitude contemplated here have historically required crisis before being implemented. It is apparent a crisis exists in our practice of democracy. At least Senators Goldwater, Mathias, Kennedy, Byrd, Moynihan and Cranston think so as do most other officeholders, most political scientists, and most people.

Our dismay over campaign practices has reached new heights in this election cycle. The political elite responds by promoting public financing of congressional races, regulating media charges, capping PAC contributions, etc. However, such approaches risk institutionalizing advertising as the primary vehicle of political campaign discourse and place even more power in the central location of incumbent dominated national committees, "feeding the mouths that bite you" as Senator Stevenson used to say. These kinds of proposals have a history of becoming lawyer and political consultant dreams and voter nightmares.

Among the nice features of the CCSL approach are its positive citizen involvement nature, eminent doability, its freedom from courtroom attack by wealthy individuals or groups based on Constitutional law and its flexibility. In our democracy it is "we the people" who must make government accountable and responsive to the common good. The Citizens Campaign Standards League provides a means for the people to exercise their moral virtue and civic responsibility and bring dignity, integrity and common sense to bear on our political

process. It appears to meaningfully respond to the mutual desires of ordinary citizens.

We simply must equitably and significantly strengthen the power of our citizens to hold elected officials accountable and responsive to serving our common good. We must better educate ourselves on matters of politics and public policy and enhance the quality of political campaigns. Let's honor our democratic values by means which are truly appropriate. Let's get over our fixation on legislative solutions and open our minds up to new, more organic approaches. There are times when that which is desirable is also the most practical. They are not mutually exclusive. This may be one of those times. The CCSL can get the job done nationally for less money than was spent in the recent California Senate race and it can be done now. It can also be done quickly, particularly if those who say they want reform are willing to act on their words.

The League concept has been in development for more than a year. Many experienced and respected political practitioners, political scientists, constitutional scholars and ordinary citizens interested in the subject have encouraged the concept's development and assessment. A number have contributed to refining it. And with the help of responsible elected leaders, it can be made a reality sooner than would otherwise be the case. The CCSL is a classic example of an obvious solution which has, until now, evaded us.

CCSL Summary Attached

- (1) Walter Truett Anderson, To Govern Evolution: Further Adventures of the Political Animal (New York: Harcourt Brace Jovanovich, Inc., 1987), pp. 1-3.

SUMMARY DESCRIPTION

of the

CITIZENS CAMPAIGN STANDARDS LEAGUE

Citizens Campaign Standards League

1424 16th Street, N.W., Suite 105, Washington, D.C. 20036
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CITIZENS CAMPAIGN STANDARDS LEAGUE

The Citizens Campaign Standards League was formed to become a new fundamental American political institution created through a grass-roots mass movement. The Citizens Campaign Standards League ("CCSL") is to be the vehicle, independent of government, through which citizens democratically set standards on election campaign fundraising and spending practices. It will achieve adherence to the standards by means of a voluntary pledge program whereby citizens promise to vote for those candidates who adhere to them. Importantly, this is accomplished in a way that avoids the problem of "single issue" identification. The CCSL's standards are intended to stimulate greater citizen participation in the political process, enhance political accountability and responsiveness, reduce the cost of campaigns and improve the dignity and integrity of our election campaign process.

The CCSL movement is being initiated on the basis of considerable positive feedback from a wide range of experts, political practitioners, and ordinary citizens and reflects their input over the past twelve months.

Problem

A vast majority of American citizens believe our election campaign fundraising and spending practices seriously undermine the integrity and effectiveness of representational democracy in the United States. A majority in Congress also lament the spiraling cost of campaigning, the increasing, often distorting, impact of independently funded and managed special interest activities aimed at influencing election outcomes, the exponential growth of candidate dependence on political action committee ("PAC") contributions to finance their campaigns, and the commercial, trivialized approach to campaign use of broadcast media. American citizens express their discontent with election campaign practices by not voting or voting with reluctance.

Until now, most efforts to resolve election campaign problems have focused on legislative reforms. This is due, at least in part, to the preeminence of the legal profession in American political affairs and its tendency to define problems in quantifiable, symptomatic, technical terms requiring linear-rational remedies aimed at suppressing these symptoms. This fixation on legislative remedies has become so intense that it is erroneously believed to be the only avenue of resolving these problems. For example, some reform advocates state as indisputable fact that the Supreme Court has ruled that the only way to constitutionally establish overall campaign spending limits for a campaign is as part of a voluntary system of public financing. The options of establishing enforceable limits independent of law, as the CCSL intends, or through asking the Supreme Court to revisit the issue or by passing a Constitutional

Amendment allowing Congress to establish limits is simply excluded from consideration by many of those who read or hear such statements.

The infection which gives rise to such symptoms as soaring campaign spending and low voter turnout is one of excessive individualism and self-deceiving rationalism. These excesses diminish our appreciation for the interdependent nature of existence and our commitment to the common good, foster ignorance and muddled thinking and, thereby, erode the foundation upon which a healthy democratic republican form of government must rest. Under such circumstances, legislative remedies are, at best, inadequate. Recent experience with legislative campaign reforms supports this view. Symptoms are treated and the infection manifests itself in new, more resistant ways. New more potent legislative treatments are then proposed which have the potential of becoming political consultant and lawyer dreams but citizen nightmares.

Attention is now focused on overcoming the Constitutional restraints on limiting spending (e.g., Buckley vs. Valeo) by passing voluntary public financing laws or a Constitutional Amendment allowing Congress to set limits, devising schemes to discourage independent spending, placing further restrictions on PAC candidate contributions, passing provisions requiring candidates to appear personally in their campaign advertisements and other symptomatic treatments. While many of the legislative remedies proposed may effectively suppress current symptoms, laws can not, by themselves, resurrect our practice of civic republicanism, improve the level of political accountability and responsiveness or adequately address the need to enhance the quality of informative, substantive political dialogue. We the people must have the political will and means to empower ourselves to exercise our civic virtues and responsibilities in positive, meaningful ways before such goals can be accomplished.

Despite the post-Watergate legislative reforms and huge expenditures in the last four years to register new voters and encourage voter turnout, candidates for elected office have been chosen by less than ten percent of the registered voters. Voter turnout in general elections is the lowest of any of the world's leading democracies. Many Americans choose not to participate in a process they perceive as inconsistent with their attitudes and values and unconnected to their daily lives. This situation together with a weak political party system make political accountability and responsiveness difficult to achieve.

The federal government's capacity to develop, enact and administer responsive and coherent policy has diminished significantly since World War II. More than forty treaties have been rejected or never been brought to a Senate vote. The weakening of political parties as a result of once needed reforms combined with current uses of communications technology contribute to officeholder dominance over party affairs and a lack of cohesion among elected officials from the same party.

The federal budget deficit is a dramatic example of the lack of accountability and responsiveness in our current system. Many, if not most, political practitioners and scholars believe the lack of accountability and responsiveness in government has reached crisis proportions.

The CCSL addresses election campaign practices in a way which attacks the infection as well as the symptoms by providing citizens a means of exercising their civic responsibilities and authority together to reform campaign practices and by providing more incentive for citizens to participate in their local political community and interact with people of diverse views and backgrounds. The CCSL has been described by one of our nation's most respected historians and political scientists, James Macgregor Burns, as a most creative and intelligent approach to what is perhaps the toughest problem in American politics. While the CCSL does not directly address problems in our election campaign practices which are more appropriately remedied through law and party rules, it does lay a new foundation upon which other reforms to our political system deemed meritorious have a better chance of being enacted. In addition, the CCSL will have an indirect impact on some practices not explicitly targeted. For example, the CCSL's spending limits will have the effect of reducing the length of campaigns.

Purpose and Strategy

The Citizens Campaign Standards League ("CCSL"), an unincorporated association, was formed as a non-partisan, non-profit, institutional movement organized for all American citizens who want to improve the quality of our election process. Its purpose is to set enforceable political election campaign fundraising and spending practice standards (see Attachment I) which will enhance accountability and responsiveness in American government and provide meaningful incentive to participate in the political process at the community level. In so doing, citizens will be accomplishing what, until now, has not been possible because of institutional and incumbent officeholder self-interest and desirable Constitutional limitations on legislative solutions. The CCSL, in accomplishing its purpose employs the same Constitutional provisions which allowed for the formation of political parties in the early 1800's, the right to freely associate.

CCSL is a process focused institution. As such, CCSL takes no positions on local, state or federal legislation, does not lobby, and does not endorse or support political candidates or referenda. Therefore CCSL "pledge registrants" will be the majority of American voters who, while retaining their diverse political and philosophical persuasions, are united in their desire to bring common sense to bear on political campaign practices.

CCSL is to accomplish its purpose through a pledge

registration program much in the same way people register in political parties (see Att. II). There is no fee. Citizens pledge, with the right to exercise exceptions based on their own judgement, to vote only for candidates who adhere to the campaign fundraising and spending standards established democratically by CCSL members. The pledge exception provision or "back door clause" allows citizens the freedom to vote outside of their pledge if they deem it important to the public interest. The CCSL pledge does not become effective until a critical mass number of people have registered. Once this minimum number is achieved (currently set at 51% of the registered voters within a Congressional District) only candidates conducting their campaigns in accordance with the CCSL standards would be able to win. This is an important feature because it prevents the CCSL from being cast as a "single issue" movement. The standards are a non-issue until the critical mass is achieved and remain a non-issue afterwards since all serious candidates would abide by the standards.

The CCSL's standards apply nationally for federal elections, statewide for state elections, and locally for local elections and are to be established by registrants at those levels. In the event of legislation providing for the public financing of Congressional campaigns, CCSL federal standards continue to apply (see Att. I).

The CCSL is responsible for informing voters which candidates promise to conduct their campaigns in accordance with the standards and, just prior to each election, notifying voters of those candidates who adhered to the standards. This approach to election campaign reform accomplishes what most people want in a responsible and democratic way and is not subject to courtroom attacks from wealthy individuals or special interest groups based on Constitutional law. It is elegantly simple in that respect. The CCSL will monitor campaign financial reports submitted in accordance with law and regulation and will require candidates who have voluntarily agreed to comply with the CCSL standards to file with the CCSL any additional reports needed to assure compliance with the CCSL's fundraising, spending and disclosure standards.

The CCSL is to establish a fund, separate from its operational account, to inform voters through advertising and direct mail about independent expenditures made on behalf of or in opposition to a candidate. The CCSL Compliance Commission is responsible for determining when such independent expenditures are directed at influencing the outcome of a candidate's campaign and for deciding on how much to spend to inform voters of such "shadow" campaign activity.

The CCSL will have a significant impact on transforming our practice of election campaigning. If federal standards close to those illustrated on the attachment are adopted by the CCSL's founding convention delegates, they will, among other things:

1. eliminate direct PAC contributions to candidates and increase PAC contributions to political parties at the local level;
2. increase voter constituent control over political money and thereby provide real incentive for activists to participate in local party politics;
3. require that the Congressional campaign committees, national parties and PACS contribute to county and state party organizations who in turn would decide which House and Senate candidates, in the case of county committees, or Senate candidates, in the case of state committees, are to receive financial support;
4. reduce the candidate's fundraising burden and lower the cost of campaigning by setting overall campaign spending limits and limits on broadcast advertising spending;
5. improve the quality of political discourse by restricting broadcast advertising to the announcement of campaign sponsored meetings or events, the promotion of the viewing of or listening to a campaign purchased program or a program on which the candidate is appearing;
6. increase voter registration and turn-out by making the system more accountable, responsive, and dignified.

The CCSL is organized as an unincorporated association due to current law which would require the CCSL to organize as a political action committee ("PAC") if it were to incorporate. Since the CCSL is conceived as something far larger and more fundamental than a membership organization or PAC, its Board of Governors has determined that it is more appropriate to operate under the legal form known as unincorporated association and to manage itself in accordance with the strictest laws governing non-profit corporations. Funds contributed to the CCSL are not tax deductible.

It is worth noting another advantage of the CCSL approach: flexibility. Since the CCSL's standards are not law, it is in the position to respond on a timely basis to unforeseen problems or needs. For example, active CCSL registrants from a particular Congressional District may wish to amend the Federal Standards as a result of unique circumstances impacting campaign costs. The bylaws and operating rules will establish procedures for such amendments, subject to approval by randomly selected representatives from the jurisdiction concerned.

Citizen Support

The question of how many people would likely sign a CCSL pledge has been addressed using two different methods.

The first method was a formal survey (see Att. III) of 100 randomly selected adult citizens. The survey was taken in departure lounges at National and Dulles Airports where waiting passengers (see sample profile Att. III) had sufficient time (circa 15 minutes) to complete the survey. The results of the survey (see Att. III) indicate that 47% would sign or probably would sign the pledge and an additional 36% might sign the pledge. An estimate of how many of those indicating they might sign the pledge actually would sign is based on their answers to the questions concerning political accountability (64% of the "maybes" answered no), their level of satisfaction with current campaign practices (89% of the "maybes" expressed dissatisfaction) and their perception as to the acceptability of the standards (93% of the maybes found them acceptable). These percentages average out to 82%. This percentage represents the maximum estimate of "maybes" who probably would sign the pledge while the lowest of the percentages cited above, 64%, represents the likely minimum. Splitting this difference yields an estimate of 73% of the "maybes" who would likely sign or an additional 26% of the total sample. Therefore, the total most likely pledge potential reflected in the survey is estimated at 73% (47% + 26%). In post survey discussions with those who would probably not or would not sign the pledge, many said they might change their minds based on the better understanding resulting from the discussion. Therefore, given sufficient time to learn and discuss the CCSL approach, it is likely that more than 73% of the population would be inclined to sign the pledge. The percentage of the sample expressing dissatisfaction or great dissatisfaction with the way campaigns are funded and conducted was 85%.

The second approach consisted of informal interviews and focus group discussions involving more than 300 people over a six month period. This approach was comparable to a simulated sales method since the concept was presented verbally as well as in written form and provided for discussion in each case. The results were not systematically recorded. However, only three persons expressed opposition and approximately thirty expressed skepticism of the need for or practicality of such a grand undertaking. This confirms the post survey interview finding that many inclined to answer negatively will answer positively once they have an opportunity to get feedback on their concerns.

Founding Convention

The final CCSL Federal Election Standards are to be adopted at the CCSL's first annual convention in 1987 or 1988. Delegates to this convention will also review and amend where necessary the institution's bylaws, elect a Board of Governors to replace the interim Board, adopt rules and regulations pertaining to the CCSL's Compliance Commission selection and operation and take any other actions necessary.

Voting delegates to the convention are to be selected in two categories: Randomly identified registered voters and political

party central committee members. Two-thirds of the voting delegates are to be chosen using a uniform random voter registration list method. Five names are to be selected for each vacancy and invitations extended in the order of their selection until the vacancy is filled. The expenses of these delegates are to be reimbursed, if requested, using funds raised by volunteers in their communities. The remaining one-third of the voting delegation is to be made up of activists in local, state and national political party organizations. A third non-voting category of delegates exists to allow scholars, interested political practitioners and citizens to attend.

Developer/Acting President

James E. Mills (age 42) is the developer and acting manager of the CCSL. Mr. Mills has more 15 years experience as an organization management and business consultant with particular focus in strategic planning, financial management, communications and sales and marketing. He has served as contract management officer and developer of a national trade association, marketing director of an equipment manufacturing company and strategic planner and management officer at the national level in two Republican Presidential campaigns.

Mr. Mills is a member of the Committee on the Constitutional System, a group of political scientists, practitioners, former and current officeholders, Constitutional scholars and interested citizens formed to discuss and assess alternative ways of making our political system more accountable and responsive. He has also taught at the undergraduate level, authored a text on effective leadership body functioning, provided planning services in the field of aging, and managed research and development activities in such areas as human resource information systems, optical fiber communications, and professional liability insurance.

Mr. Mills is married and the father of two sons. He earned his B. A. degree with honors in two majors, Social Science Integrated Studies and German from the University of California at Berkeley.

Board of Governors

In addition to Mr. Mills, the initial members of the Board of Governors are Elsa Porter, former Assistant Secretary of Commerce, U.S. Department of Commerce and currently a management consultant to business and government, and Mr. James S. Turner, Esq., a senior partner in his Washington, D.C. law firm and an experienced and respected consumer advocate and corporate attorney.

Advisors

More than eighty five experienced and knowledgeable citizens including constitutional and legal scholars, former and current elected officials, political scientists, philosophers, political practitioners, sociologists, business and labor leaders, journalists and other concerned and active citizens were invited to review the initial CCSL proposal and assist in its refinement. Most responded with encouragement and interest and many provided constructive criticism.

Among those who have been most supportive and helpful are Walter Truett Anderson, PhD., political scientist, author and lecturer; James Macgregor Burns, PhD., Professor Emeritus of history and political science at Williams College and author; the Honorable C. Douglas Dillon, former Secretary of the Treasury and Co-Chairman of the Committee on the Constitutional System, the Honorable Arthur S. Flemming, PhD., former Secretary of HEW, University President, and Chairman of the U.S. Civil Rights Commission; the Honorable Joseph S. Fisher, PhD., former member of Congress and Professor of Public Policy at George Mason University; Hazel Henderson, PhD., author, lecturer, and futurist; Kay Lawson, PhD., Professor of political science at S.F. State University and member of the Committee on Party Renewal; Mary Louise Smith, former Chairperson of the Republican National Committee; James L. Sundquist, PhD., Senior Research Fellow at the Brookings Institute and author of Constitutional Reform and Effective Government; and Mark Satin, Editor and Publisher of the political newsletter, New Options.

Others who have expressed encouragement to further develop and assess the CCSL's merits include, among others, Senator Howard Baker, current White House Chief of Staff and former Senate Majority Leader; Alexander Heard, PhD., Chancellor Emeritus, Vanderbilt University; Governor Richard Lamm, former Governor of Colorado; the Honorable Barbara Mikulski, member, U.S. Senate, the Honorable Barbara Jordan, former member, U. S. House of Representatives and Professor of Public Policy, University of Texas at Austin; Benjamin Barber, PhD., political scientist and guest lecturer, Princeton, University; Loretta Williams, PhD., Director, Social Responsibility, Unitarian Universalist Association; Robert N. Bellah, PhD., Professor of Sociology and author, University of California at Berkeley; William Sullivan, PhD., Professor of Philosophy and author, LaSalle University; Tom Mathews, Partner, Craver, Mathews, Smith; William Scranton, III, former Lt. Governor of Pennsylvania; Thomas Railsback, former member, U.S. House of Representatives; Gerhard Casper, JD., PhD., Dean, University of Chicago Law School; Ernest Callenbach, PhD., political scientist, author and lecturer; Roy Anderson, former Senior Vice President for Strategic Planning, Allstate Insurance Company; Elizabeth Dodson Gray, PhD., Director, Bolton Institute, author, and lecturer; and Thomas Stoel, JD., Director, Natural Resources Defense Council.

Organizing Committee/Board

Notice is to be sent inviting persons representing a balance of varying political views and ideological persuasions and known to the interim founding Board and its advisors to have expressed support for actions leading to the enhancement of our practice of democracy to attend the meeting of the Organizing Committee at which time additional members of the CCSL's first Board of Governors will be elected.

Pre-Convention Objectives

Prior to the founding convention, additional research, development and planning activities are to be carried out in order to:

1. obtain from a diverse group of experienced political scientists, legal scholars, former officeholders, arbitration experts, professional political consultants and activists, who are interested in the CCSL approach, detailed analyses and recommendations concerning the CCSL's current structure, bylaws, planned Compliance Commission composition and operating procedures and the proposed federal campaign standards in light of their potential impact on the political system. Specific areas generally agreed to as being significantly problematic are to be identified and modifications suggested to mitigate their potential negative impact.
2. prepare final convention drafts of the CCSL's Federal Election Campaign Standards, Pledge, Bylaw Amendments, and Compliance Commission structure and operation documents and circulate to political party leaders, current officeholders, PAC leaders, and any interested organizations and individual citizens in order to obtain their recommendations/comments prior to the convention.
3. prepare convention delegate background materials including the above analyses and recommendations and information pertaining to all convention agenda items and mail these materials well in advance of the convention.
4. prepare a blue sky search report of all state laws and regulations pertaining to election campaign disclosure and reporting requirements, political parties and a review of party rules in order to identify any areas which might suggest change on the part of party organizations as a result of the CCSL standards being in effect.
5. prepare detailed plans for Board review, amendment and adoption related to all facets of the founding convention including delegate selection, logistics, delegate communications, news media relations, program content and coordination, fundraising, financial management, and staffing.

Att. I CONVENTION DRAFT

Federal Election Campaign Practice Standards

Citizens Campaign Standards League

Citizens who have registered with the CCEL have pledged to consider voting only for candidates running for federal elected offices who, upon declaring their candidacy and filing in their respective states, agree in writing to adhere to the following campaign practices:

Campaign Finance:

1. Candidates may receive campaign contributions from a.) individuals, 80% of which funds must come from persons whose official primary place of residence is located within the election district concerned, and b.) only those political party organizations located within the Congressional District in the case of House candidates or within the state in the case of Senate candidates, or nationally in the case of Presidential candidates. Donations from public, special interest or any other kind of political action committees ("PACS") may not be accepted by candidates but may be accepted by political party organizations. All funds received are to be reported in accordance with the Federal Election Campaign Act, as amended, and the regulations of the Federal Election Commission. In the event of legislation providing for public financing of Congressional campaigns, candidates may accept such funds so long as they are distributed and expended in accordance with these standards.

2. Candidates may accept contributions from the sources defined above in amounts defined by law.

3. Candidates may contribute from their personal or family resources including loans no more than \$ 20,000 for a House race, \$ 40,000 for a Senate race, and \$ 100,000 for a Presidential race.

Spending:

1. Television and radio advertising is restricted to the announcement of scheduled campaign related field events and meetings, the promotion of campaign scheduled broadcast media programs of no less than 5 minutes in length and/or the promotion of programs on which the candidate is participating. Such broadcast programs are intended to allow candidates to introduce themselves, provide background information as to who they are, describe how their experience and skills qualify them to hold office, why they are running for office and what their positions are on issues of importance to them and their constituents.

Spending on broadcast advertising and programming is limited as follows:

House Congressional Primary Elections: Media Zone 1 \$ 50,000
 2 \$ 75,000
 3 \$100,000

General Elections: same as above

Senate Primary Elections: \$200,000 or 4 cents per citizen of voting age in the state, whichever is greater.

Senate General Elections: as above.

Senate limits apply to House candidates that represent a whole state.

Presidential Primary and General Elections: per federal law and regulation.

2. Candidates are limited in total campaign expenditures as follows:

House Congressional Primary Elections: Media Zone 1 \$150,000
 2 \$225,000
 3 \$300,000

House Congressional General Elections: as above

Senate Primary Elections: \$ 500,000 or 10 cents per citizen of voting age in the state, whichever is greater.

Senate General Elections: as above

Presidential Elections: per federal law and regulation.

Disclosure:

1. Candidates, in agreeing to adhere to these standards, must sign the CCSL's disclosure agreement, intended to allow the CCSL to verify compliance with these standards.

These CCSL standards pertain to federal elections only and may have been amended to respond to unusual and unique circumstances in certain federal election jurisdictions. Standards related to local and state elections are provided by the CCSL chapters within those jurisdictions. Questions related to these standards may be directed to the CCSL Standards Compliance Commission.

Att. 11

PLEDGE

Citizens Campaign Standards League

Whereas it is the responsibility of American citizens to maintain the integrity and vitality of democracy under our Constitutional system of government; and

Whereas it is desirable for American citizens to assert their moral authority in democratic and responsible ways to correct problems in our practice of democracy when they exist; and

Whereas actions which make elected officials more accountable and responsive to the public interest while protecting the rights of individuals are desirable; and

Whereas our Constitution encourages citizens to freely associate with one another to meet mutual needs and solve common problems which are most appropriately addressed and remedied in a positive manner, independent of government and without the necessity of law,

I, _____ (print name), do hereby ask all candidates for elected public office to abide by the campaign standards established voluntarily and democratically by the Citizens Campaign Standards League ("CCSL") once they become effective. I pledge to consider voting only for candidates for public office who adhere to the election campaign fundraising and spending standards established by the Citizens Campaign Standards League. I reserve the right to vote for candidates who do not adhere to these standards if, as a result of unusual and unforeseen circumstances, I deem it in the public interest.

I understand that my pledge is not to become effective until such time as fifty-one percent (51%) of the voters registered to vote within my Congressional District have joined with me in making this pledge and that I will be notified when this minimum participation level is achieved. I further understand that the CCSL may not disclose my name or address until such time as the minimum pledge registration level is reached.

In signing this pledge I do hereby represent that I am a Citizen of the United States, eligible and registered to vote in the County of _____, State of _____ and that I have been provided with the CCSL Pledge Registrant Information Pamphlet and a copy of this pledge.

Signature: _____ Street: _____

City/St/ZC: _____ Tel: () _____ - _____

Att. III

CCSL Survey Results Summary

Sample: Male - 60; Female - 40

Regional Distribution: West - 11; Mt. States - 2; Midwest - 16;
South - 15; Mid-Atl - 35; No. East - 21

1. Would you say political officeholders are sufficiently responsive and accountable to the public's interest and moral virtues?
Yes = 31%; Don't know = 13%; no = 56%
2. Are you a registered voter? Yes = 91%; No = 9%
3. If no, do you plan to register in the future?
Yes = 5.6%; Undecided = 2.2% No = 2.2%
4. How often do you normally vote?
Seldom = 7%; Usually = 34%; Always = 59%
5. In general, how would you describe your political views?
Liberal = 23%; Moderate/Middle = 47%; Conservative = 29%;
Other = 1%
6. Would you describe yourself as a younger voter; a middle aged voter; or an older voter?
Younger = 41%; Middle Aged = 37%; Older = 22%
7. Would you say you are in the lower income bracket; middle income bracket; or upper income bracket?
Lower = 9%; Middle = 63%; Upper = 28%
8. In general, would you say you are very dissatisfied; dissatisfied; or satisfied with the way campaigns are now funded and conducted?
Very Dissatisfied = 20%; Dissatisfied = 65%; Satisfied = 15%

READ THE ATTACHED MATERIAL NOW

9. Are the draft standards excellent; acceptable; or unacceptable to you personally?
Excellent = 9%; Acceptable = 72%; Unacceptable = 19%
10. Based on what you have read, would you sign the pledge?
Yes = 20%; Probably = 27%; Maybe = 36%; Probably Not = 4%;
No = 13%
11. Did you find the reading material difficult; somewhat difficult; or easy enough to understand?
Difficult = 4%; Somewhat Difficult = 19%; Easy Enough = 77%

CCSL SURVEY		#1	Standards	#10	Pledge	Maybe	Prob. Not	No	#11	Understand
Total 100		Accept	Exclnt. Unaccept	Yes	Probably	36	4	13	Difficult	Some Diff. Easy
		72	5 19	20	27				4	19 77
#1										
Yes	31	20	5	7	9	8	0	6	1	5
Don't Know	13	11	1	4	3	1	1	0	1	2
No	56	41	3	9	15	23	3	7	2	12
#2.										
Yes	91	64	8	19	24	31	4	13	3	16
No	9	8	1	1	3	5	0	0	1	3
#3										
Yes	5	5	0	0	2	3	0	0	0	2
Undecided	2	2	0	0	1	1	0	0	0	1
No	2	1	1	1	0	1	0	0	1	0
#4										
Seldom	7	6	1	1	3	3	0	0	0	2
Usually	34	28	0	3	8	17	0	6	1	6
Always	59	30	7	15	13	11	4	7	2	8
#5										
Liberal	23	16	5	11	6	5	0	1	0	5
Mod./Middl	47	36	2	4	18	15	3	7	3	8
Conserv.	29	20	2	5	3	16	1	4	1	5
Other	1	0	0	0	0	0	0	1	0	0
#6										
Younger	41	26	4	6	10	16	1	8	0	6
Mid. Age	37	27	4	10	10	10	3	4	2	7
Older	22	19	1	4	7	10	0	1	2	6
#7										
Low Inc.	9	6	1	1	3	3	0	2	0	3
Mid. Inc.	63	46	4	13	17	21	4	8	2	12
High Inc.	28	20	4	6	7	12	0	3	2	4
#8										
Very Dis.	20	12	5	3	6	5	0	3	1	5
Dissatis.	65	53	3	13	17	27	2	6	3	13
Satisfied	15	8	1	1	4	4	2	4	0	1
Sample Profile:										
Male	68	Male	Female	West	Mt. States	Midwest	Mid. Atl.	No. East		
			40	11	2	16	35	21		

APPENDIX 5D

STATEMENT BY ED GARVEY

ON S.2, April 25, 1987

Mr. Chairman, my name is Ed Garvey. I was the Democratic Party nominee for the United State Senate seat in Wisconsin in 1986, and I am currently president of the Progressive Forum located in Madison, Wisconsin. I am also a lecturer at the University of Wisconsin Law School. I submit this statement in favor of campaign finance reform as set forth in S. 2. Although I do not believe it goes far enough, it would go a long way toward improving the scandalous system we now face.

The Senate race in Wisconsin was, by far, the most expensive race in the history of the State. Senator Kasten spent roughly \$700,000 in 1980 while his Democratic opponent, Senator Gaylord Nelson, spent about \$800,000. Six years later, Senator Kasten was one of the top money raisers in the United States with \$3,396,000. Our campaign raised \$1,200,000 and spent \$1,264,000. At least half of our money was spent in a tough primary battle. Wisconsin has a late primary and in 1986 it was held on September 9. While Senator Kasten outspent us overall by nearly 3-1, he outspent us in the general election from September 10 to November 4, by probably 6 or 7 to 1. Incumbent Senators told me from the beginning of my campaign that I might win

if outspent, but that I could not win if outspent by more than 2-1. We almost proved them wrong as we lost by only 3% of the vote but there is no question that money was the major factor in the general election. I say it was the most important factor not just because my opponent could outspend us so significantly, but also because it had a dramatic impact on the way in which he campaigned. His three million plus allowed him to avoid the media, avoid meaningful joint appearances with give and take, and avoid the necessity of a series of debates. He could do this because he could purchase hundreds of 30 second spots which saturated the airwaves throughout the general election. His tremendous money advantage made it possible for him to run a canned television campaign to the exclusion of nearly all other campaigning. The American people deserve to see and judge a real contest between two live candidates, not be forced to sit through a campaign between unknown and unseen media experts.

Many people have asked about the impact of money on the candidate and I will give you just a brief description of the impact on the candidate and on the process itself. First, many good people, who are reasonably successful in business, farming, education, labor, the practice of law, or any other profession, would never seek public office because they would not subject themselves to the fund-raising that is an essential part of the process. I honestly believe that the quality of our candidates is lower largely because

sensible people simply refuse to subject themselves to the humiliation of asking friends and strangers for money. It goes against the grain of most Americans. Thus, the quality of our representation is reduced by the process. I believe we would be pleasantly surprised at the improvement in the quality of candidates if you adopt campaign finance reform.

When I began exploring the possibility of seeking the Senate seat, we invited a campaign consultant from Washington to visit with us in Madison. I was excited about the issues we would face: Star Wars funding vs. money for housing and health care; aid to the Contras vs. a sensible policy in Central America based on the economic development of the area; solutions for acid rain, limitation on defense spending, help for failing farms, our elderly and small business. It was exciting to think about the debates and the presentation of ideas in a Senate race. The consultant immediately put an end to that euphoria. He said over and over again that money, not issues, would determine the outcome of the campaign. I didn't believe him then but I do now. And, every where I went from the Democratic Senate Campaign Committee to well known fund raisers around the country, the question was always "Can you raise the money?", not "How do you feel about Star Wars, the budget deficit, the trade imbalance?". Money dominated nearly every discussion with these sophisticated groups. The message was always loud and clear, if you can "raise the money" you are

a viable candidate, if you can't, or even express doubts, you are not viable and that is that.

I thought the advice that I would spend 50 to 60% of my time on fund-raising was absolute nonsense but it was not far off the mark. As I would drive around the state I had a bundle of cards with names of strangers and their phone numbers. Whenever I had a break I was supposed to call these strangers from a pay phone and ask for \$1,000. Imagine the absurdity of such a call. To those of you who have had to participate in this game, you know exactly how I felt. What many people fail to consider is the impact on the candidate. Instead of discussing the latest crisis in foreign or domestic policy, the candidate is asking strangers for a lot of money and, of course, most of those people will say no. When I would call the campaign headquarters the question was always the same: "Have you made your calls yet?" Money dominated the agenda from morning till night. Instead of policy meetings on the Hasenfuss crash, we talked about raising enough money to respond to the latest negative 30 second spot. If it were not true it would be comical. Everyone in and around our campaign knew that Kasten would have as much money as he wanted or needed and that also made fund raising more difficult for us. Afterall, the wise "investor" wants to go with a winner and the winner is predictably the one with the most money. While one can point to some races where the winner was seriously outspent (Shelby, Fowler, Breaux,

Conrad), those races simply prove the rule that the candidate with the most money is the odds on favorite, particularly if that candidate is the incumbent. Instead of spending four or five hours a day raising money, we should allow our candidates to spend that time convincing people to get involved in the process. Allow them to discuss issues not campaign contributions.

The impact of money on the conduct of the campaign is equally disturbing. Nearly all the emphasis is on television and the 30 second spots. The more money you have, the more 30 second spots go on the air. The media consultants and the pollsters "educate" the campaign managers to the basic truth that this is the era of television. I heard one nationally famous consultant say that he only allows his candidates to go out and meet people because it keeps them happy-- makes them feel he or she is doing something, but, he said, the outcome is all decided on television.

The result of that reliance on 30 second spots is that the candidate with the huge money advantage can avoid all, or nearly all, public debates or confrontations with the challenger. Why should he or she debate, when he or she might screw up? He cannot make a mistake on video tape because they will take and re-take until he gets it right and looks good. In a debate he might say something stupid or at least harmful. He may not come off as the confident

incumbent against the challenger and therefore, lose the advantage of incumbency.

Senator Kasten's campaign followed the Boschwitz guideline to Republican candidates. Senator Kasten participated in only one debate with me and agreed to only two joint appearances. He refused all news conferences for a year and one-half before the election. And, the rules for the joint appearances were almost laughable. He would speak for 15 minutes and then take 15 minutes of questions from a panel, then I would do the same and he would quickly leave the room. Not exactly what the Lincoln-Douglas debates provided for the voters. Senator Kasten insisted that we not ask each other questions or engage in any debate during these joint appearances. When I offered him part of my time to answer my questions he declined. I am not trying to re-live the campaign. Rather I want you to understand the luxury afforded those candidates with sufficient money to use 30 second spots as a substitute for campaigning in the normal fashion.

I agree with Senator Graham: "A candidate who avoids appearing before civic groups, who ducks direct questioning by the press, who never meets with, talks, to, listens to constituents--isn't prepared for public office--and doesn't deserve it." The fact is however that candidates, and particularly incumbents, can duck debate, refuse meaningful discussion, refuse to meet the media if you do not change

the system. And, it worked. He was reelected but the voters of Wisconsin were denied the opportunity to see real live candidates mixing it up on television, radio or even in live audiences.

I urge you to change the rules so that elections in the future will be about issues not 30 second spots. So that candidates, not media consultants, will be the focus of the campaigns. So that potential voters will see real live candidates doing well, making mistakes, looking nervous, looking confident. Whatever they say or look like, it will be real and not on tape.

The only way I can see these changes occurring is if you limit spending and make some other changes as well. I agree with Bob Graham that you should force candidates to participate in at least 2 one-hour debates during the last week of the campaign. I would add to that by suggesting that each candidate be required to hold an open ended, no-holds barred televised news conference for two hours during the last week of the campaign. We must subject these candidates to the scrutiny of the media as well as the opponent if the public is to really find out who these people are and have confidence they are choosing a Senator not a programmed substitute. When the votes come in the Senate, it will be the Senator, not the media consultant casting the vote.

One other extremely disturbing part of our campaign must be addressed. Senator Kasten spent hundreds of thousands of dollars putting negative TV spots on the air. One of those spots is the subject of a libel action brought by my wife and I so I will not comment on the details. What is so troubling is that the broadcasters had no choice but to put these 30 second spots on the air. The public doesn't know that. They assume that the TV stations wouldn't put something on the air if it were not true. I urge you to do two things: First, give broadcasters a choice about airing spots. Today they are forced to accept anything so long as the candidate is associated with the spot. Secondly, outlaw any televised negative spot unless the negative words come directly from the candidates mouth on the screen. Do not let him hide behind the graphics or the accusatory voice of a professional. As a matter of fact, I would put in the law that any televised advertising must be the candidate speaking and nothing else. Forget the charging bloodhounds, the little girl picking flowers, the bear in the forrest, the ringing phone and all the other props. We should be electing candidates not madison avenue props. I would also give the FEC the obligation to review all political spots within 24 hours of airing if a complaint is launched. If the facts in the spot are not supported by evidence supplied by the produceer of the spot, require the removal of the spot. If that offends your view of the First Amendment, at

a minimum, the FEC should go on the air and tell the truth about the spot.

Finally, I would urge that you eliminate all TV advertising during the last two weeks of the campaign. Let the real live candidates face the voters during that crucial time when voters are making up their minds.

I advocate complete public financing over a threshold as set forth in S. 2. I would urge you to outlaw PACs entirely. There is no good reason for them to exist if we have grass root support for the threshold and public financing of the rest. I would limit the individual candidate to \$5,000 to be spent on her or his own campaign, and place a limit on individual contributors of \$250. You should also outlaw bundling of contributions and such groups as IMPAC '88. Why should a group of wealthy people have the right to hold news conferences on the "right" choice. why should a group of 40 people determine or even influence the outcome of the Presidential primary race by money instead of ideas? Let the voters decide on the basis of the candidate's performance, not on the basis of what some unknown spokesperson from a group of fund raisers has to say.

Last but not least, so-called independent groups such as the AMA should not be allowed to pour thousands of dollars into a campaign. If they are truly independent, let them contribute to get-out-the-vote efforts. For every

dollar contributed in favor of one candidate, public financing should provide two dollars to the opponent. That would stop this interference in the process.

Thank you, Mr. Chairman, I hope these comments have been helpful. If we are to restore public confidence in our electoral process we must once again hold elections instead of auctions. Enactment of S.2, with the suggested changes made above, will help to restore that confidence.

APPENDIX 5E

TESTIMONY SUBMITTED BY JAMES J. BAKER
DIRECTOR, GOVERNMENTAL AFFAIRS

NATIONAL RIFLE ASSOCIATION
INSTITUTE FOR LEGISLATIVE ACTION

to the

SENATE RULES AND ADMINISTRATION COMMITTEE

HEARINGS ON CAMPAIGN FINANCE REFORM
APRIL 22, 1987

The National Rifle Association is an organization whose membership is in the millions. We also represent an additional 15 to 20 million American sportsmen and gunowners who are not members of the Association. While our legislative focus has been primarily on the preservation of the Second Amendment, we view the First Amendment right to free speech as vital to American democracy. The present system allowing voluntary contributions to candidates and political committees is an expression of that right.

The National Rifle Association also supports the operation of Political Action Committees (PACs) as an integral part of the campaign process. These committees allow thousands of otherwise politically inactive individuals to become a part of the political system that makes ours a democratic society. Conversely, we oppose any attempt to further restrict the right of PACs to operate. To that end, the NRA board of directors recently passed the following resolution:

"MOVED, That the National Rifle Association of America is opposed to legislation which further restricts the right of political action committees to contribute to candidates, which further establishes public financing of elections, or which, in any way restricts the right to make independent expenditures.

In the last few years, we have been consistently bombarded with advertisements and editorials charging that the proliferation of PACs is evil -- perverting and corrupting the political process. This is a myth. In fact, the abundance of such a diverse group of Political Action Committees allows an even greater choice of political involvement.

Members of the National Rifle Association are certainly not restricted to involvement in the NRA Political Victory Fund (NRA-PVF). Rather, they can contribute to a wide variety of political committees that support their beliefs in many areas.

The NRA-PVF was founded in 1975. Its purpose was, and is, to encourage its members activity in the electoral process, promote the desire to understand the nature of politics and develop a greater knowledge of political issues affecting American sportsmen. As a Political Action Committee, the NRA-PVF engages in a number of activities - the political education of our members, direct contributions to candidates running for state, local and federal office, and independent expenditure campaigns on behalf of candidates.

The National Rifle Association is a non-partisan organization. Our members come from every political philosophy and every walk of life. This is reflected in the activity of the PVF, both in our fundraising efforts and candidate support. In 1982 the NRA-PVF received contributions from 113,172 individuals. The average contribution was \$15.75 - indicating broad participation in the PVF. In 1986, we received contributions from 170,345 individuals, the average contribution being 20.57. It is through Political Action Committees such as this that so many contributors can unite their resources, joining those with similar concerns to participate more effectively in the political process.

The most common activity of a PAC is the direct contribution of funds to a campaign. S. 2 - the bill viewed as the most likely vehicle for campaign finance reform - would reduce the current PAC contribution limit of \$5,000 per candidate per election cycle to \$3,000. Charges have been made that a candidate is "bought" with a \$5,000 contribution. Yet the implication is that a candidate would not be "bought" with a \$3,000 contribution. This is absurd reasoning. A \$5,000 or a \$3,000 campaign contribution to a candidate is miniscule in comparison to the overall campaign budget. To assume that a candidate can be bought with such a contribution is, in fact, leveling a very serious charge against the moral fibre of our elected and yet-to-be-elected officials. Since the

establishment of the \$5,000 limitation, inflation alone has drastically reduced the spending power of those dollars. Obviously, a \$5,000 contribution in 1987 is worth much less than it was in 1977. The reduction of individual PAC contributions is a non-solution to the perceived problem of excessive campaign costs.

While the most common activity of a PAC is the direct contribution of funds, there are many other activities of equal importance. The NRA-PVF has been very active in the political education of its members. Election information is regularly sent to our members. This information consists of everything from material on how to become involved in a political campaign to political preference charts to direct endorsements. Our members are keenly interested in the position of candidates on Second Amendment rights and hunting issues. We receive numerous requests for this information prior to an election. The voting records, position statements and other relevant information are carefully researched before being made available to our members. The NRA is held accountable for the accuracy of our information, and our members do hold us accountable.

The political education process is a two-way street. Our members regularly contact us with information about a candidate and often ask the NRA-PVF to support someone they would like to see elected. This information is included in the decision-making process.

One vital tool in making informed decisions about the candidates that would best serve our members is the personal interview of the candidate. Many candidates seek the support of the NRA and request a meeting to discuss their candidacy. Because the NRA occasionally engages in independent expenditures, this tool would be virtually eliminated by section 6(C) of S. 2. This section states that it is not an independent expenditure, but rather a coordinated expenditure (thus subject to the proposed \$3,000 limitation) when "the person making the expenditure (including any officer, director, employee or agent of such person) has communicated with, advised, or counseled the candidate or the

candidate's agent at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office." According to this section, suggesting to a potential candidate he/she talk to the Senior Senator of his/her state regarding the possibility of running for Federal office would prohibit us from engaging in an independent expenditure because we gave advice relating to the candidate's decision to seek Federal office.

Meeting candidates has not only enabled us to evaluate their candidacy, it has also allowed us a means of educating them on issues of concern to America's law-abiding gun owners. Because questions regarding their candidacy are asked, and our advice is often sought, to comply with section 6(C) of S. 2, we would have to decide for which candidates we would engage in an independent campaign, and then refuse to meet with them at any time and for any reason (other than to discuss the weather). This is unrealistic and unenforceable -- it is currently possible to meet with a candidate to determine the campaigns' viability without crossing the line from independent into coordinated expenditures.

Personal interviews with candidates, in conjunction with voting records, position papers, information from our members, etc., provide us with the required information that is vital to the decision making process. As stated earlier, the NRA is a non partisan organization. NRA-PVF contributions are made to candidates of both major parties without regard to their political philosophy or party affiliation. The final decision to support a candidate running for any level of office is made by the NRA-PVF Board of Trustees. This Board consists of six members - five of whom are Division Directors in the NRA Institute for Legislative Action. The decisions are based on the broad spectrum of information discussed above, with the major goal being the support of candidates whose positions are in accord with the interests and concerns of our membership.

The decision to support a candidate is primarily based on the position of that

candidate as it relates to issues of concern to the NRA. Contributions are given to those candidates already supportive of NRA positions on the preservation and furtherance of the Second Amendment and hunting rights. The NRA-PVF does not support a "hostile" candidate hoping that somehow our support will change the candidates' mind on our issues, or that a contribution will change a vote in the future. We have seen a lot of comparisons between the voting behavior of our elected officials, and the legislative agenda of the PACs from which they have received contributions. The assumption, whether implied or directly stated, is that Members of Congress vote a particular way because they have received a campaign contribution from an organization whose position on that issue is in accord with their vote. The fact, authors of those comparisons refuse to acknowledge, is that PACs, by and large, give to candidates who hold views similar to theirs PRIOR to any vote!

Candidates, both incumbents and challengers, are supported by the NRA-PVF because of their issue positions prior to our decision to support them.

In addition to the political education of our members and direct contributions to a campaign, the NRA-PVF has been active in independent expenditure campaigns. These campaigns are conducted without consultation with the candidate or his/her campaign. PVF independent expenditures involve the following activities:

1. Letters of endorsement to NRA members and hunters in the state and/or congressional district
2. Brochures, flyers, posters endorsing a candidate
3. Postcards mailed to NRA members and hunters in the state and/or congressional district
4. NRA produced radio ads
5. Newspaper ads endorsing candidates

The majority of independent expenditure campaigns wages by the NRA-PVF urge

our members to vote for a candidate. Rarely do we oppose a candidate, and even those races are most often in conjunction with an endorsement and positive campaign for the opponent.

Advocating the defeat or election of any candidate is based entirely on that candidate's position on hunting issues and the preservation of the Second Amendment. The information distributed through an independent expenditure campaign is as carefully researched as that used in our political education programs.

Some claim that it is a perversion of the entire political process to hold a candidate accountable on a single issue. Yet, the entire political arena consists of hundreds of single issues. An individual voter must decide for himself which issues are of greater concern. The voting decision is then based upon the priority of these many issues. Our job is not to tell our members how to vote. Our job is not to distort the information. Our job is to give to the voter, whether an NRA member or not, information on how a candidate stands on issues related to the Second Amendment and hunting. While we can reach our members via our political education system, quite often we must use an independent means to reach the gun owners and sportsmen who do not regularly receive electoral information. Once we get this information to these voters, it is up to them to prioritize these issues, and decide the importance they play in making their voting decision.

Many times, the task of distributing this kind of information costs in excess of \$25,000. We find the proposal in S. 2 - to give the opposing candidate additional public financing payments equal the amounts we spend over and above \$25,000 - repugnant. This is plainly a penalty imposed for trying to educate the public as to the voting behavior and/or positions taken by a particular candidate on issues. Even more pernicious is that the monies received by the opposing candidate do not need to address the issue at hand, but can be used for any purpose desired.

Contrary to the belief that independent expenditures eliminate accountability of

the PAC engaged in such activity, the accountability of the NRA-PVF is increased. The reputation and credibility of the NRA is in jeopardy if our information is not accurate.

As stated in the National Rifle Association Board of Directors resolution, the NRA opposes the establishment of public financing of elections. Although supporters of S. 2 claim it establishes a voluntary system of public financing, the penalties for not participating are so great that candidates are, for all intents and purposes, forced into accepting public financing. Offering public financing as an alternative to traditional fundraising methods is one thing. The choice provided in S. 2 is really no choice at all.

Although the specifics in S. 2 are logistical in nature, the theory behind public financing is very damaging to the participation of PACs in the political process. In addition to the anti-PAC attitude of this section, the technical aspects are also designed to eliminate PAC participation. For example, assume the spending limit is \$1,000,000 and the threshold is \$250,000. Once the candidate reaches the threshold, according to S. 2, they immediately become eligible for the remaining \$750,000. Assuming they receive the entire amount, not only will PACs be prohibited from contributing, so will any additional individuals. Thus, PAC activity can only exist: a) during primary election cycles; b) during independent expenditures, which have already been severely penalized; and c) if there is not enough money in the campaign fund, and the amounts of public financing are pro-rated so a candidate can then raise the remaining difference up to the spending limit. This is not an encouraging prospect, and appears to be another attempt to extricate Political Action Committees and their contributors from the political process.

Political Action Committees perform a vital role in our political system. The contribution made to our democracy by PACs is far more than merely providing candidates with campaign finances. The wide variety of PACs encourages individuals to become a part of the democratic process. The person whose attitude toward government and the electoral process has been, "What can I do? I'm only one person." or "Why should

I vote? What good will just one vote do?" is afforded the opportunity to join those with similar concerns in a united front and affect the political process. The proposals set forth in S. 2 would do great damage and take a step back from the present system. Far from being detrimental to our government, Political Action Committees are people exercising their right of free speech and association within the political context. The National Rifle Association - Political Victory Fund supports the activities of Political Action Committees as a healthy and productive element of our democratic process, and opposes any attempt to undermine this system.



Citizens
United to
Reform
Elections

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TESTIMONY PRESENTED TO
SENATE RULES COMMITTEE

by

Edward R. Bowditch

and

Ted Weinstein,

founding members of

CITIZENS UNITED TO REFORM ELECTIONS

April 1987

a non-profit, tax exempt public interest organization

It is an honor to present testimony to this committee on the vital issue of election reform. We would like to thank the Chairman for speeding consideration of S.2 and the other bills addressing the issue of campaign finance reform that have been introduced this term. We thank the Chairman and members of this committee for giving us this opportunity to present our views.

To introduce ourselves, Citizens United to Reform Elections is a nonpartisan public interest organization with the express goal of promoting meaningful, comprehensive reform of the congressional campaign laws in order to restore the importance and influence of the individual voter.

CURE's Board of Advisors is a nonpartisan group of individuals who share these concerns. This Board currently includes former congressman John B. Anderson, Congressmen Morris K. Udall of Arizona and Jim Leach of Iowa, Professor Thomas E. Cronin of Colorado College, and former Iowa state senator Steve Sovern.

Many diverse groups and individuals will come before this committee to express their concerns and ideas. Some will bemoan the fact that the sheer cost of mounting a congressional campaign is soaring out of control. Others will complain of the declining amount of campaign funds that come in small amounts from individual donors. Still others will criticize the growing incidence and magnitude of independent expenditure campaigns. Citizens United to Reform Elections shares each of these concerns, and we are eager for speedy enactment of legislation that will address these serious problems.

Today, however, we are here to draw attention to the overarching principle that must guide the reform effort, the importance of renewing the role of individual citizens in the political process. Many of the specific complaints outlined above are worrisome only as they relate to their detrimental effect on the influence and involvement of individual voters.

Our organization's Statement of Purpose discusses these specific issues in greater depth. We request that this document be read into the record, and look forward to answering the committee's questions.



Citizens United to Reform Elections

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STATEMENT OF PURPOSE

The United States has made great strides toward the Founders' ideal of a government by and for all its people. Suffrage is now more universal than even they envisioned, and political guarantees make real each citizen's abstract right to vote. Gone are the poll taxes and literacy tests that kept millions from the voting booth, and gone, too, are the gerrymandered boundaries that diluted the strength of minority votes.

But in this, the bicentenary of the Constitution, the most important principle of that revolutionary document is being undermined. With each passing campaign cycle, the American political system essentially excludes ever greater numbers of "we the people." This nation faces a grave threat to our democratic ideals as public faith and involvement in the political process approach a new low. The principle of "one citizen, one vote" is being undermined by a process that increasingly serves the notion of "one dollar, one vote."

The factors contributing to the current crisis are well-known and have been widely condemned. The basic cost of mounting a congressional campaign is spiraling out of control. Steep increases in special interest funding have overwhelmed the share of campaign donations from constituents. At the same time, independent expenditures fund anonymous "shadow campaigns" that subvert legal limits on political donations. The growing influence of special interests has taken its toll on public confidence in the system.

THE FLAWS IN THE CURRENT CAMPAIGN SYSTEM

The 1986 congressional elections saw campaign spending soar to unprecedented levels. Victorious candidates for the House of Representatives raised nearly \$150 million, up more than three-fold since 1976. The 34 winning Senate candidates raised more than \$100 million, fully 400 percent more than a decade ago. Fundraising has become a constant task that clogs the wheels of government and overshadows the legislative duties we elect our senators and representatives to fulfill.

At reasonable levels, the demands of political fundraising benefit a democracy. Candidates must articulate their views and reach out to voters in order to raise the funds needed to mount a campaign. But when a candidate for the House of Representatives must raise a half million dollars to be considered a credible contender, democracy suffers. When a Senate candidate from even the smallest state must raise nearly a million dollars, democracy suffers.

Fueling this explosive rise in the cost of congressional campaigns has been the proliferation of political action committees. Numbering only about 600 in 1974, more than 4,000 PACs exist today. In the 12 years since the last significant reform of the federal election laws, PAC donations to congressional candidates have risen almost tenfold, to over \$125 million in the most recent election. The average Senate candidate received more than \$600,000 in PAC contributions in 1986, 50 percent higher than just two years ago.

Increased PAC contributions have skewed the political fundraising process. Twelve years ago, fully half of all campaign funds came from individual contributors giving small donations; today, that figure has dropped to barely 20 percent. The abolition of the federal tax credit for small political

contributions figures to push this percentage even lower.

Soaring special interest donations have minimized the role of the individual voter, the very foundation of our democratic process. When the voice of individual citizens is drowned out by the roar of the special interests, democracy suffers.

Beyond these enormous direct donations, many special interests have mounted extensive independent expenditure campaigns intended to bypass the legal limits on donations to individual candidates. Such campaigns, sometimes spending more than the candidates themselves, were most notable in 1986 for their lack of success. But these groups have vowed to increase their efforts in the next election. Regardless of its success or failure, deceptive political communication has no place in a democratic society. When independent interests wage shadow campaigns outside the public eye, democracy suffers.

Special interests do not support candidates -- whether directly or indirectly -- for philanthropic reasons. While no one contends that PACs buy votes in Congress, it is widely perceived that their dollars buy access to lawmakers which is unavailable to individual voters. Dialogue with one's elected representatives is a precious right of citizenship, not a privilege to be offered only to the highest bidder. When citizens feel they must buy access to have their voices heard, democracy suffers.

This elevation of the special interest over the public interest is not merely an abstract concern. Voter turnout, the most important measure of citizen interest and participation, tumbled to a postwar low in 1986. Only 37 percent of eligible voters went to the polls, as the vast majority of Americans registered their alienation by staying home. When two out of every three Americans refuse to participate in the political process, democracy suffers.

Our nation's Founders envisioned a democracy based on participation by all and representation for all. The current state of affairs, however, raises important questions about who

is participating and who is being represented. It is time to return to the principle of "one citizen, one vote" that is the heart of our democracy.

REFORMING THE SYSTEM

While it is easy to outline the problems that beset the American electoral process today, fair and comprehensive solutions are more difficult to devise.

The last significant campaign reform came in the early 1970s, in response to the abuses epitomized by the Watergate affair. The Federal Election Campaign Act of 1974 helped eliminate some of the most egregious abuses and created mechanisms to enforce the new laws.

But in the following twelve years, new campaign financing methods and other developments have changed the face of our electoral system. The balance of political power has shifted again, as the vast financial resources of the special interests have overwhelmed the influence of the average voter.

The importance of citizen participation in the electoral process makes it imperative to reform the system once again. Incumbent or challenger, Republican or Democrat, liberal or conservative, all must agree that the strength of our political system stems from its reliance on individual Americans. Increasing the participation and influence of the individual voter is the most important step we can take to strengthen our democracy.

Meaningful election reform must address these three basic issues: the soaring costs of waging a congressional campaign, the declining share of political donations coming directly from individuals, and the increasing use of independent expenditures to fund shadow campaigns.

No single reform will mitigate all the problems with the current campaign process. Further, equitable improvements must

not alter the current balance between the political parties and between incumbents and challengers. A combination of changes is necessary to effectively revitalize the influence of the individual voter while not disrupting these delicate balances.

To this end, Citizens United to Reform Elections proposes the following set of reforms:

- Limiting the total amount of donations a congressional candidate can accept from all political action committees in a two year campaign cycle.
- Reinstating and increasing the tax credit for individual contributions to a congressional candidate.
- Lowering current limits on the amount individual PACs can donate to a congressional candidate.
- Strengthening the disclaimer requirements and tightening disclosure rules for all efforts funded by independent expenditure campaigns.

These proposals comprise the basic components of a meaningful reform effort, but this list is neither fixed nor exhaustive. Many other ideas for election reform have been raised that deserve examination, ideas whose adoption would supplement or perhaps obviate the need for some of those above.

Any comprehensive reform plan must meet strict criteria of effectiveness and balance. The first step toward election reform, however, must be to examine all possible changes without preconception. Only then can Congress and the public fairly explore the consequences of specific reforms as well as the consequences of inaction.

THE ROLE OF CITIZENS UNITED TO REFORM ELECTIONS

Calls to change the campaign system did not begin in 1986;

the need for significant reform is more than a decade old and has been sharpened by each passing election cycle. A number of organizations have devoted many years and vast resources toward campaign reform. The question then arises, Why CURE?

Until now, campaign reform has been pursued from strongly ideological and partisan perspectives. The stakes are high, since even the most modest changes in the campaign laws could significantly alter the balance between Democrats and Republicans or between incumbents and challengers. Every American benefits, however, when we renew public confidence and participation in our political system.

Citizens United to Reform Elections firmly believes that these problems can and indeed must be solved through bipartisan consensus. To help build this consensus, CURE is an impartial, nonpartisan advocate for the overwhelming national interest in reforming elections. We support no political party and favor no ideological perspective. CURE's efforts are directed solely at achieving constructive changes in the campaign system that will benefit every citizen.

Moreover, all of CURE's resources will be devoted to addressing the issue of election reform. Many established advocates of campaign reform have broad agendas, making this issue just one of many they address. All of CURE's efforts, in contrast, will be focused on the single goal of achieving meaningful changes in the congressional elections.

CURE's specific efforts will fall into three broad areas, involving communications with the media, with other citizens organizations, and with the American public directly.

The media will play the largest role in educating the public about election reform. In the last election cycle, the press devoted considerable attention to this issue. CURE will further raise the level of media attention both by providing detailed information to support more in-depth reporting on the issue and by communicating with editorial boards to prompt stronger advocacy for reform.

Another important avenue for educating the public about election reform is through established organizations -- across the political spectrum -- devoted to civic, fraternal, economic and local political interests. Such organizations already have large bases of active members whose participation in this effort is essential.

Many of these groups, however, have not yet focused on the issue of campaign reform. CURE will provide information and expertise to help such groups foster growing attention to this vital issue and will promote communication and cooperation among the diverse groups that must work together to provide an effective force for change.

Perhaps most important, however, is the need for direct citizen participation in the immediate push for campaign reform. We cannot allow vital changes in the election system to take place in a vacuum of public inattention. Thus, CURE will act as a catalyst for public attention by educating voters about the importance of campaign reform and by encouraging direct involvement in the reform effort.

The fate of election reform ultimately rests in the hands of Congress. Without direct public involvement and concern, the moneyed special interests will take the unchallenged opportunity to block any meaningful reform. To restore the importance of the average voter, individual citizens must make their voices heard in the halls of Congress.

Every member of Congress has a detailed understanding of the flawed campaign process. But the coordinated voice of the American public is needed to force Congress to act. Every lawmaker who believes he or she enjoys the genuine support of constituents must heed their cries to reform the system. Every citizen who believes in the ideal of representative democracy must actively work toward this goal. Citizens United to Reform Elections is the nonpartisan advocate for this vital public interest.

APPENDIX 5G

TESTIMONY

of the

AMERICAN MEDICAL ASSOCIATION

to the

Senate Committee on Rules and Administration

RE: S. 2, the Senatorial Election Campaign Act of 1987

The American Medical Association would like to thank the Senate Committee on Rules and Administration for this opportunity to present its views on the changes S. 2, the Senatorial Election Campaign Act of 1987, proposes to make in the present campaign financing system.

Background

The American people are witnessing profound changes in the way candidates campaign for political office, especially at the federal level. In every election cycle, candidates and an expanding corps of campaign professionals are creating constantly more sophisticated ways of using revolutionary communication technologies to reach out to voters. Arguably, these changes, along with changes in the way political parties function, are resulting in longer, more costly election campaigns and give rise to philosophical and ethical issues that go to the heart of the democratic process.

As can be expected from any evolutionary change in a political system, some problems within the system have developed. At the same time, our political process searches for the legislative means by which the problems can be solved and resulting inequities corrected. S. 2, the

Senatorial Election Campaign Act of 1987, would radically change our current system.

The American Medical Association believes that S. 2 is a misguided effort that would unnecessarily destroy a system of voluntary campaign financing that now works well in its encouragement of the broadest possible individual participation in the election process. When relatively minor changes in the present election system would suffice, S. 2 suggests the creation of a costly, administratively difficult system of public financing, which has been shown to be unwanted by the public and which would serve to discourage broad participation in the election process. S. 2 also fails to address important concerns about the campaign process that the AMA believes can and should be addressed.

Encouraging Individual Participation

Essential to any change in election laws must be the assurance that as many individuals as possible will be encouraged to participate in the election process. The present voluntary contribution system is the preferable financing method for encouraging such participation. In comparison to public financing, a voluntary system encourages individuals to actually participate throughout an election campaign with their contributions, and demands that candidates continue to reach out to their constituencies.

Public Financing

Public financing would be unduly expensive. The Federal Election Commission has estimated that S. 2, as originally introduced, would cost \$92.5 million for the 1988 elections. The Treasury Department shows that

the current one dollar tax check-off for presidential elections raises \$35 million a year, which could result in a 1988 campaign deficit of about \$80 million. This deficit would then need to be met through general revenues and does not take into consideration the added cost for administering such a system.

Most important, however, is the long-standing evidence that the American people do not want public financing. In an independent 1986 survey of attitudes toward campaign financing, more than 70% of respondents disapproved of using public funds to pay the costs of congressional campaigns. These results are consistent with responses to the survey over the past ten years and are also consistent within every subgroup of the population surveyed. A summary of the survey's results accompanies this testimony.

PACs

Broad participation of individuals in the election campaign process is also discouraged by the limitations S. 2 proposes to place on political action committees (PACs). Contrary to the typical criticisms leveled at PACs, the primary responsibility of PACs is to involve as many individual members as possible in campaigns. PACs are effective only if they can educate their participants about the responsibility they, as individuals, have in the election process, the positions and qualities of candidates, and the effect individuals can have within the democratic process. No other institution supports the democratic process in quite the same way.

Clearly, the S. 2 aggregate contribution limits on candidates and parties and the lowering of the individual PAC contribution limit would

frustrate the ability of PACs to reach out to individuals. In fact, current limits on contributions by PACs — and by individuals and political parties — are based on legislation that was passed in 1974. The value of contributions has eroded by more than fifty percent since that time. In order to allow PACs to be effective in involving their participants in the campaign process, campaign laws should periodically increase existing limits based on inflation to ensure that individual campaign contributions can have an impact on the election process.

To ensure the diversification of funding sources, limits on individual contributions need to be increased, then also indexed. Likewise, limits on political party spending should be eased to give a greater role to the parties in the political process. More specifically, the law should legitimize "soft money" contributions given to political parties by requiring the reporting of such contributions, which can play a vital role in the campaign process.

Independent Expenditures

S. 2 also threatens to cast a chilling effect on the constitutionally protected right of individuals and groups to make independent expenditures in a campaign. The bill proposes to make a participating candidate eligible for public funds to match independent expenditures of more than \$25,000 made in opposition to the candidate or in the support of the candidate's opponent. The AMA is a leader in the use of independent expenditures that support candidates in an unequivocally positive manner. We believe it is an effective way of allowing our

participants to take an active role in the political process. The right to do so, which is firmly based on free speech principles, should not be challenged.

Preventing Abuses

Congress should not engage in this examination of the issues surrounding the election process without addressing some of the current abuses of the system, which often seem, unfairly, to cause the entire system of voluntary contributions and PACs to be brought into question. Relatively minor changes in the election laws could solve these problems, yet S. 2 does not address them.

Full disclosure of contributions and donations should be the corner stone of the campaign financing system. Full disclosure permits the electorate to judge how campaigns are financed and whether any candidate receives excessive contributions from a particular interest group.

The manner in which contributions are spent by candidates should also be addressed. Candidates should be required to declare the office they seek before soliciting funds, and the funds contributed to a candidate for one office should not be spent on a campaign for a different office. Legislation should also more clearly ensure that campaign contributions be spent only for legitimate campaign purposes.

Further, any campaign committee of a candidate for federal office which has money left after a general election campaign should be required to return all the excess over a small amount, perhaps \$5,000, to the donors or donate the balance to the U.S. Treasury. The AMA would also support legislation prohibiting a member of Congress from heading those

PACs known as "leadership PACs," which potentially allow contribution limits to be circumvented, raising too many questions about undue influence among Congressional members.

Finally, the AMA also encourages Congress to establish a bipartisan commission to conduct a comprehensive inquiry into how campaign contributions are spent and how the campaign process has been affected by the revolution in communications, inflation, the growing influence of campaign professionals, changes in political party rules and influence, and other considerations. Critics of the voluntary campaign contribution system and PACs too easily relate the problems of the campaign process -- negative campaigning, excessive costs, and over-reliance on content-shallow electronic media advertising -- with voluntary campaign financing and PACs.

Before taking any action aimed at a perceived problem, Congress should take the time to study the entire election campaign process, with the goal of isolating those specific problems that discredit a generally effective system of involving the American people in the democratic process.

Conclusion

S. 2 should not be adopted. In its examination of the election campaign process, Congress should isolate those specific problems that need to be addressed and corrected. We urge your consideration of the principles for reform contained in the addendum attached to this statement.

Addendum

AMA Principles and Recommendations for Campaign Finance Reform

1. The present voluntary contribution system is the preferable financing method. Citizens should be encouraged to participate in the support of candidates of their choosing through voluntary contributions. The AMA does not support the use of tax dollars for campaign expenses.
2. Disclosure of contributions and donations should continue to be the corner stone of the campaign financing system. Full disclosure allows the electorate to judge how campaigns are financed and whether there is any excessive contribution by one interest group or another.
3. The AMA urges more citizens to contribute to candidates and political parties. The tax credit approach is available to all taxpayers regardless of their tax bracket and should be encouraged and increased as a device to broaden participation in voluntary political campaign financing.
4. Current limits on contributions by individuals, political action committees and political parties are based on legislation that is nearly a decade old. In order to encourage more participation by individuals, PACs and political parties to help finance higher campaign costs, legislation should periodically increase existing limits based on inflation.
5. The restrictions on expenditures for Presidential campaigns should be modified to encourage a better mix of public, private and political party spending. Specifically, the law should legitimize the "soft money" situation and require reporting of these contributions. Limits on political party spending should be eased to give a greater role to the parties in the political process. Finally, individual contribution limits should be eased to encourage this source of funding.
6. The AMA supports legislation which would prohibit a member of Congress from heading a political action committee.
7. Candidates should be required to declare what office they are seeking before soliciting funds. Funds contributed to a candidate for one office should not be able to be spent on a campaign for a different office. Candidates who announce for one office and collect funds for that campaign and then

decide to run for another office should be required to return those funds to the donors or donate them to the U. S. Treasury.

8. There should be legislation which requires candidates to use campaign contributions only for legitimate campaign purposes.
9. Any campaign committee of a candidate for federal office which has money left after a general election campaign should be required to return all of the excess over a small amount, such as \$5,000, to the donors or donate the balance to the U. S. Treasury.

ATTITUDES TOWARD CAMPAIGN FINANCING

1986

The Tenth in a Series of Annual CSI Studies

Public attitudes toward federal funding of presidential and congressional campaigns have remained relatively stable over the past ten years. The data contained in a 1986 nationwide public opinion survey indicates continued opposition to extending public financing to congressional campaigns.

A majority of respondents favor a change in the current system of total public financing of the fall general election campaigns for President.

The 1986 poll was the tenth annual survey of attitudes toward campaign financing conducted since 1977. The current data included 1,568 voting age Americans interviewed in a random telephone survey.

CONGRESSIONAL CAMPAIGNS

For a decade, Americans have indicated their opposition to public funding of congressional campaigns. This feeling was endorsed in the 1986 data. A benchmark question has been asked since 1977: "It has been proposed in Congress that the federal government provide public financing for congressional campaigns for the U. S. House of Representatives and Senate. Would you approve or disapprove of the proposal to use public funds, federal money, to pay the costs of congressional campaigns and how strongly do you feel?"

Strongly approve	7.4%
Approve	13.7%
Disapprove	28.6%
Strongly disapprove	42.0%
No Opinion	8.3%

The data indicates that virtually every sub-group within the populace opposes the use of federal funds for congressional elections. For example, Democratic respondents registered 68.7% opposition; Republicans, 72.0%; and Independents, 69.4%.

Among occupational groupings, white collar respondents registered 20.1% approval versus 73.0% disapproval; blue collar, 19.2% versus 72.6%; professional, 25.0% versus 65.6%; students, 14.9% versus 71.6%; and farmers, 18.9% versus 70.3%.

Union members indicated 69.3% opposition to public funding of congressional campaigns with 21.3% approving. White respondents indicated 77.0% opposition; Black, 74.3% opposition; and Hispanic, 73.1% opposition.

Male voters voiced 69.7% opposition and female,

71.6%. The strongest opposition was found in the West North Central states, the East South Central and Mountain areas.

A TEN YEAR DATA CURVE ON THE BENCHMARK QUESTION

1977	Approve	32.5%	/ Disapprove	53.4%
1978	Approve	21.5%	/ Disapprove	67.1%
1979	Approve	21.8%	/ Disapprove	67.9%
1980	Approve	23.1%	/ Disapprove	66.2%
1981	Approve	21.0%	/ Disapprove	67.8%
1982	Approve	25.4%	/ Disapprove	65.2%
1983	Approve	24.5%	/ Disapprove	65.0%
1984	Approve	23.6%	/ Disapprove	64.8%
1985	Approve	26.6%	/ Disapprove	65.0%
1986	Approve	21.1%	/ Disapprove	70.6%

PRESIDENTIAL CAMPAIGNS

The public favors a change in the system of financing the fall presidential election which currently is funded totally with public money. Again, a standard question on the use of such funds has been asked since 1981. In 1986, the following benchmark registered 22.4% approval and 73.1% disapproval, with 4.5% indicating no opinion.

"The 1984 campaign for President was financed or paid for as follows: The primary campaigns were financed in part by tax dollars through public financing and in part by private contributions . . . a matching system. The fall general election campaigns were totally financed by public funds. Do you approve or disapprove of the use of public funds, federal money, to pay the total cost of the fall, general election campaigns for President, such as was done for Reagan and Mondale? How strongly do you feel?"

As with congressional campaigns, opposition cut across virtually all sub-groups in the population. For example, Republicans expressed 72.2% opposition; Democrats, 74.3%; and Independents, 71.3%.

CHANGING THE PRESENT SYSTEM . . . ALLOWING MATCHING FUNDS

A majority of respondents favor some kind of change in the present system. Over one-third support allowing matching contributions similar to the process now used to finance presidential primary campaigns.

"There has been a lot of talk after the presidential campaign about changing the way general election or fall campaigns are financed. Which of the following do you favor?"

Abolish public financing and return to a system of private contributions to pay the cost of general election presidential campaigns... 39.2% approve

Allow a matching system for the fall general campaign like the presidential primary campaigns are financed, where there is a combination of private contributions from individuals and committees and public funds... 36.1% approve

Maintain the present system of financing the fall presidential campaign totally with public funds... 17.0% approve

No opinion... 7.8%

STATE LEVEL CAMPAIGNS

Respondents also do not favor using public funds for state level races. "Would you approve or disapprove of the proposal to use public funds, state money, to pay the costs of major statewide offices like the governor's race, state senatorial and legislative campaigns?"

Approve 19.0%

Disapprove 76.9%

No opinion 4.2%

SUPPORT FOR THE DOLLAR CHECK-OFF

The provision to allow citizens to check off \$1.00 from their federal income tax for use in the presidential campaign has widespread citizen support:

Approve 69.9%

Disapprove 26.4%

No opinion 3.7%

CAMPAIGN REFORMS

There is support for changes in the manner of congressional campaigns.

A strong majority favor abolishing paid television commercials and providing a limited amount of free time to candidates... 65.2% approve

Of those polled, 76% favor limiting TV advertising to a candidate or spokesperson, instead of broadcasting production or movie-like spots.

Giving challengers the use of the congressional frank for a district wide mailing is supported by 49.9% of the sample, with 43.0% opposing.

NATURE OF THE SAMPLE

The nationwide survey was conducted during the period of January 25, 1986 through February 2, 1986. The sample was selected by a computer generated random set of telephone numbers throughout the United States and limited to voting age citizens. Consultants for the project included Seymour M. Lipset, Ph.D., Professor of Sociology and Political Science, Stanford University; Dan Nimmo, Ph.D., Professor of Communications, University of Oklahoma; and Mike Mansfield, Ph.D., Associate Professor of Political Science, Baylor University.

The survey comprised 1,568 completed interviews with voting-age Americans and reflects general socioeconomic characteristics of the American populace. The data provides a tolerated error margin of 3% at the 95th confidence level.

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APPENDIX 5H

STATEMENT OF KEN W. COLE, PRESIDENT
NATIONAL ASSOCIATION OF BUSINESS POLITICAL ACTION COMMITTEES
ON
S. 2 AND RELATED CAMPAIGN FINANCE PROPOSALS
SUBMITTED TO THE
SENATE COMMITTEE ON RULES AND ADMINISTRATION
APRIL 17, 1987

The National Association of Business Political Action Committees (NABPAC) welcomes the opportunity to submit this statement of its views on S. 2 and related campaign finance proposals to the Senate Rules Committee.

OUR ORGANIZATION

NABPAC was founded in 1977 to assist companies seeking to establish business-employee political action committees, and providing advice and counsel on compliance with Federal regulation of PACs. NABPAC currently counts in its membership nearly 200 business-employee and voluntary membership association political action committees. (NABPAC is not itself a political action committee, and does not make contributions to candidates.)

In late 1986, NABPAC assembled an ad hoc working group consisting of representatives of its members and colleague organizations with an interest in campaign law changes. This broad-based has drafted a series of "Comments on Campaign Finance Law and Practice" which are referenced in our statement. (A copy of

the "Comments" is attached.) The comments reflect the general consensus of this working group.

The essence of NABPAC's position on campaign financing and practices can be summarized as follows:

- Congress must focus with precision and clarity on those elements of current campaign practices that are troublesome, and address these problems in a thoughtful, effective manner. Targeted reforms create less potential of disruption than sweeping measures. There is reason to fear that the wholesale revision of the campaign finance system proposed by some will lead to unanticipated consequences.

- Congress must carefully consider the views of the various institutions in the campaign process -- the political parties, the contributors, the voting public -- and preserve and enhance the participation of all of these institutions.

- If change in campaign financing law is required, Congress should only consider those proposals that (1) would tend to stimulate citizen participation in the electoral process, (2) would promote full disclosure of campaign financing, and (3) would promote competitive elections by favoring neither incumbent nor challenger.

DOES CAMPAIGN FINANCING NEED "REFORM"?

There is a threshold question with which this Committee must come to terms: Does campaign financing need "reform"? And if

so, will the "reform" proposals being advanced get to the heart of the perceived problems?

We understand there is much about the current system that vexes many observers, including Members of Congress. Many feel campaigns have simply grown too expensive. Many feel they are forced to spend too much time raising funds for their next election. Many are upset at the proliferation of negative advertising. And many are displeased at what they view as enrichment of television and radio broadcasters and campaign consultants at their expense.

All of these are honest sentiments. But these perceived problems require critical analysis. Some may be well-grounded. Others may be illusory.

Has campaign spending really skyrocketed in recent years, or have the ravages of inflation simply created that appearance? Is negative advertising as prevalent as the press would seem to indicate? Does campaign fundraising really take up too much time for the average candidate, or is this time well spent getting in touch with the candidate's constituents?

Even before the perceived problems with the current system have been adequately isolated and reviewed, proposed solutions are proliferating. More than 50 bills affecting Federal campaign financing and practices have already been introduced in the Senate and the House. How can all these proposals be reconciled? Do they threaten to create more problems than they solve?

Congress must move with caution so as not to jeopardize the legitimate role played by the key institutions that are so important a part of the process. And the proposals that merit attention should be more surgical in nature, rather than a fundamental restructuring of our electoral process.

THE ROLE OF PACs IN THE ELECTORAL PROCESS

Our organization represents the interests of one of these key institutions: political action committees (PACs). We believe it useful to restate the intended purpose of PACs, and to set the record straight on how they have performed.

We are deeply concerned that PACs have become the popular "straw man" for critics. Virtually all the excesses of the current system are directly or indirectly blamed on PACs.

There is more heat than light in these attacks. The fact that PACs have become more numerous over the years, the fact that the overall level of PAC participation in campaign financing has grown tenfold since 1974, the fact that PACs tend to give a somewhat larger percentage to incumbents than to challengers -- all of these are true. But none of these "facts" tells the whole story. And, when viewed through a historical perspective, none of these facts justifies some of the draconian anti-PAC proposals now on the table.

PACs are the product of campaign reform efforts in the wake of the Watergate scandal. Congress set up a highly regulated

system of campaign financing that stressed full disclosure and segregation of campaign funds from corporate funds.

The PAC was seen as a medium to permit responsible participation in the political process by corporate employees, association members, constituencies concerned about specific issue areas, and others with a shared perspective on matters of public concern. That is a legitimate and valuable function that the PAC structure has continued to serve.

Contrary to the belief of some, PACs are not mere check-writing machines. In fact, they play a vital institutional role in broadening citizen participation in the political process.

A PAC educates its members and potential members as to key public policy issues, and helps develop positions on these issues that are representative of the PAC's interests. The PAC then determines where candidates for Congress stand on these issues, and lends its support to those candidates with congenial views. The PAC also serves a voter education functions, keeping its members informed on the record and positions of candidates over time, and conducts get-out-the-vote campaigns.

PACs motivate citizens to get involved in the political process. In fact, but for their participation in PACs, many citizens might play no active role in politics. Nationwide, millions of individual Americans participate in the campaign process through the PACs of their choice. By making these contributors stakeholders in the election process, PACs expand public participation in an era when overall voting levels are in decline.

The fact is that PACs are representative of the wide array of interests that constitute our society. There are PACs representing every region of our country. PACs reflect every shade in the political spectrum of our pluralistic society.

As a means of channeling individual interest and energy into the political process, as a means of reasonably regulating campaign financing practices, as a means of ensuring full disclosure of campaign contributions, the PAC has proven to be a sturdy instrument. Any revision of Federal campaign finance laws should preserve and encourage the legitimate and valuable role played by political action committees.

PRINCIPLES OF EQUITABLE CAMPAIGN FINANCE LAW

Once the threshold question -- the need for reform -- has been answered, it then becomes necessary to consider the merits of various legislative options.

We respectfully suggest that the Congress measure any legislative proposal against a series of principles that, we believe, lie at the heart of equitable campaign finance law.

These principles include:

1. Base Legislation on Full Analysis

Campaign finance law is central to the fair and effective operation of our democracy and to the Constitutional rights of American citizens to participate in our political system.

Consequently, Congress has an obligation to ensure that the views of all affected parties are solicited and fully analyzed in the process of reviewing legislative proposals affecting the conduct of campaigns. We believe that PACs can make a positive contribution to the dialogue.

No single point of view should be accepted because it appears to be common wisdom. The temptation toward "quick fixes" should be resisted.

2. Promote Full Disclosure

A key to fair campaign practices is the promotion of full disclosure by both candidates and contributors. Sunshine laws help ensure that citizens know how candidates for public office are funded, and help hold candidates duly accountable.

The combination of full disclosure and reasonable contribution limits can fully protect the public interest, as the U.S. Supreme Court has articulated in the Buckley v. Valeo decision.

3. Stimulate Citizen Participation in the Electoral Process

A fundamental purpose of any changes in the election laws should be to stimulate citizen participation in Federal election campaigns -- as informed voters, as volunteer campaign workers, and as financial contributors.

The gauge of any proposed changes should be whether they help broaden citizen involvement in our democratic electoral process.

4. Avoid Undue Advantage to Incumbent or Challenger

Campaign finance laws and regulations should not give undue advantage to either incumbent or challenger. A number of current practices, although within the scope of existing law, tend unduly to favor incumbents over challengers. Proposals to replace the current system of broad-based voluntary campaign funding with taxpayer financing would perpetuate those advantages.

Congress should weigh whether proposed changes in the election laws would lead to a more level playing field between incumbents and challengers, or skew the current imbalance further.

S.2 WOULD NOT ADVANCE KEY PRINCIPLES OF CAMPAIGN FINANCE REFORM

We have reviewed and analyzed S. 2 as introduced, and we have grave reservations about the measure. In most respects, the proposal would not advance the cause of equity in the electoral process, and fails to satisfy the principles we have articulated above.

As we observed above, problems must be identified and isolated before appropriate solutions can be devised. The interrelationship of proposed changes with the current system and with one another must be carefully examined. Because S. 2 is such a far-reaching measure, it inevitably raises new problems while failing to solve existing ones.

1. Cost

We begin with the question of cost. Among the goals of the proponents of public financing of elections is the need to reduce campaign spending. But S. 2 leaves us wondering whether spending will be tempered, and where the public funds will come from.

Various commentators have projected that the public financing scheme propounded in S. 2 would cost at least \$90-95 million in public funds per election cycle. This may not even take into account the additional federal funds needed to match independent expenditures, and matching funds for qualifying minor party or independent candidates.

The suggestion that doubling the current income tax "check-off" would generate sufficient funds is illusory. Inevitably, a public financing system would need either to dip into general revenues, or (as proposed in the current version of S. 2) pro-rate funds to qualifying candidates. The former raises many serious questions, which we discuss below. The latter raises the prospect that candidates will shy away from a system that will not be fully funded.

Moreover, if the principles of this bill were extended to House election races, the required funding base would presumably swell. One public financing bill introduced in the House carries an estimated price tag of \$174 million, nearly double the Senate total. Where will these additional dollars come from?

Finally, the proposed system has several escape hatches that will diminish its effectiveness in reducing campaign spending. First of all, only candidates participating in public financing are bound by spending limits. Second, all spending caps are off once a non-participating candidate exceeds double the state spending cap. Thus, we are left with escalating costs and a depleted treasury.

2. Public Participation

Any system that includes public financing as a component eliminates the key element of voluntary public participation that is vitally important to our democracy.

So-called "public financing" is really, in the end, taxpayer financing. As noted above, the voluntary check-off will never provide sufficient funds to meet demand; therefore, general revenues -- taxpayer dollars -- will inevitably be siphoned to pay for this program.

In effect, this means that taxpayers who oppose a particular candidate in a race (or who support no candidate, for that matter) will be required to foot the bill to give that candidate a platform. It could also mean that extremist candidates (who participate under limited matching programs) would be subsidized by taxpayers who would have no say in the matter.

Moreover, as we have discussed above, political action committees current provide an important medium for voluntary participation by individuals in the electoral process. To the extent that PAC limits are reduced further -- whether by a reduction in the allowable dollar contribution by each PAC to a candidate, or by an overall dollar or percentage limitation on a candidate's receipts from all PACs -- Congress will eradicate to a significant degree voluntary contributions by the public.

3. Disclosure and Accountability

Whatever the shortcomings of the current system in promoting disclosure of and accountability for receipts and expenditures by candidates, the system proposed by S. 2 may well make the problem worse.

The Federal Election Commission already faces many questions about sufficiency of resources, vigor of enforcement of existing campaign laws, and the like. The public financing plan under consideration would heap crushing new burdens upon the agency, exponentially expanding the bureaucracy, and driving up regulatory costs without clear corresponding benefits.

The mechanisms under which expenditures by non-participating candidates or independent entities trigger an obligation by the FEC to authorize offsetting public funds to participating candidates poses an administrative nightmare.

How, for example, is the FEC to handle the situation where a non-participating candidate who has not previously exceeded the spending limit suddenly makes a massive election eve television buy?

And, in the case of independent expenditures (which also trigger offsetting funds), consider how the FEC is to judge the following situation: Group A at one end of the political spectrum purchases airtime to "extol" in a positive way the merits of Candidate Z at the other end of the spectrum -- but the true purpose of the ads is to reinforce negative feelings about Candidate Z among those who share Group A's philosophy. In such an instance, which candidate is entitled to offsetting public funds -- Candidate Z's opponent, or Candidate Z?

4. Fairness to Both Challenger and Incumbent

It has frequently been suggested that incumbency has an inherent value. Going into a campaign, the name recognition enjoyed by an incumbent (thanks to media coverage, personal appearances, and constituent mailings) along with the other perquisites of office carries a value of hundreds of thousands of dollars as against a challenger.

The only way a challenger can overcome the inherent advantages of incumbency is to spend what is needed to get comparable public visibility. The new system envisioned in S. 2 eradicates the challenger's ability to do so.

First, the spending caps that restrict both incumbents and challengers who participate in public financing take away the challenger's ability to offset these inherent advantages.

Second, tightening the restrictions on PAC receipts handicaps those challengers who do not participate in public financing. Recent analysis by the Congressional Research Service bears out the point that restrictions on PAC funding could severely curtail the ability of challengers to mount a competitive campaign.

PROPOSALS AND OPTIONS TO IMPROVE THE SYSTEM

The Federal campaign financing system could make do with some fine-tuning. A number of legitimate concerns about the

current system have been voiced by Members of Congress, and we share many of these concerns.

There are a number of options that the Congress may consider that are responsive to these concerns and also are fully consistent with the key principles we believe are fundamental for effective campaign law: due consideration of all points of view before changing the system, promoting full disclosure, stimulating citizen participation, and avoiding measures that give undue advantage to either incumbent or challenger.

In the attached "Comments on Campaign Finance Law and Practices," the ad hoc coalition organized by NABPAC offers to the Congress a series of proposals and options in several categories. These proposals are intended to advance the four principles cited above.

A rush to judgment can be avoided through the establishment of a bipartisan commission to conduct a full-scale inquiry into how candidates spend their funds, and how campaign costs have been affected by inflation, communications expenses, and other considerations.

A comprehensive review of the workings of the current system is a prerequisite to meaningful and effective modification. The study should be framed so as to take the full range of opinion on the operation of the system into account. Issues should be carefully drawn, and appropriate evidence marshalled on each point. The goal of the study should be to isolate specific spending-related problems, if any, which warrant Congressional attention.

We believe that the goals of full disclosure and accountability can be promoted by, inter alia:

- tightening the statutory definition of "campaign expenditure" to eliminate ambiguities and to prohibit certain practices that circumvent the intent of the law;

- subjecting to strict reporting requirements contributions for and spending on party-building funds and get-out-the-vote efforts, which are not now disclosed;

- discouraging so-called "bundling" of contributions, or other practices that constitute intentional evasion of categorical contribution limits or evasion of full disclosure requirements; and

- regulating independent expenditures so as to ensure full and understandable disclosure to the public that the expenditures were not authorized by any candidate or candidate's committee and are not restricted by federal contribution limits (while ensuring that mandatory disclaimers or other measures are not unduly burdensome or complex).

We offer a series of proposals that we believe would promote voluntary public participation in the electoral process (by contrast with the public financing plan), including:

- restoration of a 100% tax credit for contributions totalling up to \$100, whether the contribution is to a candidate's committee or other types of political committees;

- leaving current PAC contribution ceilings in place, increasing contribution levels for individuals, and increasing the limits on direct party contributions to candidates as well as

on coordinated expenditures by parties; and

- offsetting the continued erosion of the value of campaign contributions by indexing limits to the Consumer Price Index or other recognized indicator.

Finally, we offer several recommendations to maintain a level playing field between incumbents and challengers, including:

- restricting contributions to House and Senate candidates from all sources, including PACs, to the current election cycle;

- limiting each candidate for the House or Senate to a single authorized political committee which can make expenditures relating only to the office for which the candidate has declared; and

- requiring that each candidate "zero out" the campaign treasury at the end of each campaign, and prohibiting any personal use by any candidate of unexpended funds.

CONCLUSION

In our view, the most rational approach to campaign financing is to preserve the strengths of the current system and the appropriate roles of the various institutions within the system, while ensuring that the public is fully informed about who funds candidates and how candidates spend their funds.

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Election law should promote voluntary citizen participation in politics, not replace it with a system that removes "voluntariness" and burdens all taxpayers, with no clear benefit to the democratic process.

Before the Congress wields an axe in the name of reform, it would seem beneficial to determine whether a bit of judicious pruning would better serve the public interest. NABPAC respectfully suggests that the proposals and options with which we have presented the Committee are more conducive to the ends of equitable campaign law.

COMMENTS ON
CAMPAIGN FINANCE LAW AND PRACTICES

The National Association of Business Political Action Committees offers the following principles and policy options as a basis for revising federal campaign finance law. This statement reflects the general consensus of a broad-based coalition of business/employee and trade association political action committees.

The Purpose and Role of Political Action Committees

PACs are often criticized as mere check-writing machines. But PACs are much more. In fact, the ability to make any contributions is directly dependent on the ability of PACs to involve as many citizen-members as possible in electoral campaigns. PACs have an impact only if they can convince their participants that they have a stake in, and responsibility for, the electoral process; that election results can directly affect them and their organizations; and that they have a duty to educate themselves about the positions candidates take on issues. PACs generally keep their members informed over time as to candidates' records and statements and lead get-out-the-vote campaigns.

PACs thus serve a vital institutional function in broadening citizen participation in the political process. Any revision of federal campaign finance laws should preserve and encourage that legitimate and valuable role.

Principles of Equitable Campaign Finance Law

1. Campaign finance law is central to the fair and effective operation of our democracy and to the Constitutional rights of American citizens to participate in our political system. Consequently, Congress has an obligation even greater than in most legislation to assure that the views of all affected parties be solicited and fully analyzed; that no single point of view be accepted because it appears to be common wisdom; and that the temptation toward "quick fixes" be resisted.
2. A key to fair campaign practices is full disclosure by both candidates and contributors. Sunshine laws help ensure that citizens know how candidates are funded and make them duly accountable. The combination of full disclosure and reasonable contribution limits can fully protect the public interest, as the U. S. Supreme Court has articulated.

3. A fundamental purpose of any changes in the election laws should be to stimulate citizen participation in federal election campaigns -- as informed voters, as volunteer campaign workers, and as financial contributors. The gauge of any proposed changes should be whether they help broaden citizen participation in our democratic electoral process.
4. Campaign finance laws and practices should not give undue advantage to either incumbent or challenger. A number of current practices, although legal, tend to unduly favor incumbents over challengers. Proposals to replace the current system of campaign funding with taxpayer financing would perpetuate those advantages. Congress should weigh whether proposed changes in the election laws would lead to a more level playing field between incumbents and challengers, or skew the current imbalance further.

Proposals and Options for Congressional Consideration

A. CAMPAIGN CONTRIBUTIONS

1. Many critics of the federal election system allege that campaigns have become too lengthy and that fundraising places inordinate demands on the time of officeholders. In order to address these problems, contributions to candidates for the House and Senate from all sources (including PACs) could be restricted to the current election cycle. An exception might permit contributions toward retirement of outstanding campaign debts within a brief time following the general election.
2. Both campaign contributors and recipient candidates must be held fully accountable for the flow of campaign funds. Currently, some contributors may give to so-called "leadership" PACs which redistribute funds to other candidates. This practice potentially allows circumvention of the law's limits and raises other questions of undue influence. Such practices may also drive up overall campaign spending levels. These problems can be addressed by limiting each candidate for the House and Senate to a single authorized political committee which can make expenditures relating only to the office for which the candidate has declared. Candidates would not be permitted to control additional political committees for the purpose of raising funds to be disbursed to other candidates for elective office.

3. Congress should also consider requiring candidates to "zero out" the campaign treasury at the end of each campaign. No candidate would be permitted to carry over unexpended campaign funds into the next election cycle. Similarly, any person who raises funds to run for federal office but who ultimately withdraws from the race would be required to dispose of any unexpended funds in a defined manner. No personal use by any candidate of unexpended funds would be permitted. Among other things, a measure incorporating these ideas might well help reduce campaign fundraising activities and campaign costs.

B. CAMPAIGN SPENDING

1. Critics of PAC contributions often relate or confuse the issue with other charges of abuse in the system -- the excessive costs of campaigns, their negative nature, and over-reliance on simplified electronic media advertising. Before taking action aimed at any single element of campaign spending or at particular sources of campaign contributions, the Congress should establish a bipartisan commission to conduct a full-scale inquiry into how candidates spend their funds, and how campaign costs have been affected by inflation, communication expenses, and other considerations. The goal of the study should be to isolate specific spending-related problems, if any, which warrant Congressional attention. For example, such a study should help illuminate whether the high-priced marketplace in media advertising, direct mail and other campaign consulting services drives the need for fundraising, or vice versa.
2. A recognized problem with the current system is the expenditure of campaign funds for goods and services not clearly related to campaign requirements. There have been instances of expenditures on such dubiously "campaign related" items as country club dues and the purchase of automobiles. Therefore, the statutory definition of "campaign expenditure" should be tightened to eliminate ambiguities and to prohibit certain practices that circumvent the intent of the law.

C. CAMPAIGN CONTRIBUTION LIMITS

1. Campaign contribution limits have gone unchanged since the passage of the FECA in 1974; inflation has eroded the value of a campaign contribution by more than 50 percent in the intervening years. There is no justification to further reduce allowable contributions by PACs either individually or in the aggregate, for to do so would reduce, rather than encourage, citizen participation in the funding of political campaigns.

-4-

2. Some charge that sources of campaign funds have fallen out of balance, with a disproportionately greater share coming from PACs and a decreasing share from individuals. Reducing the participation of PACs in the process is not an appropriate response, for the reasons cited above. Rather, Congress should consider increasing contribution limits for individuals in order to help diversify funding sources.
3. Historically American political parties have been the glue holding the American electoral process together. Candidate recruitment, consensus-building, citizen education, and the forging of broad coalitions out of disparate interest groups are just a few of the essential functions carried out largely through the party system. Today many observers worry that declining party identification among the public and the diminished role of parties may threaten some of these important functions. One way to contribute to the renewal of parties would be to increase the limits on direct party contributions to candidates, as well as on coordinated expenditures by parties.
4. To offset continued erosion of the value of campaign contributions in the future, Congress should index contribution limits to the Consumer Price Index or other recognized indicator, extending a principle found in other parts of the federal election law.

D. PROMOTING FULL DISCLOSURE

1. Full disclosure by both contributors and recipients of all funds spent in connection with federal elections is essential to protect the public interest. Spending and contributions, such as those utilized for party building funds and get-out-the-vote efforts, which are not now disclosed should be subject to strict reporting requirements.
2. Congress should prohibit all fundraising practices that constitute intentional evasion of categorical contribution limits or evasion of full disclosure requirements. Measures to discourage so-called "bundling" would contribute to this end. With regard to such measures, it would be appropriate to tighten the definition of who may be an "agent" of a federal candidate for fundraising purposes.

-5-

3. In regulating independent expenditures, the primary goal should be full and understandable disclosure to the public that the expenditures were not authorized by any candidate or candidate's committee and are not restricted by federal contribution limits. At the same time, mandatory disclaimers and other measures should not be unduly burdensome or complex.

E. PUBLIC PARTICIPATION IN THE FINANCING OF FEDERAL ELECTIONS

Voluntary participation in the political process by citizens should be encouraged through the restoration of an appropriate tax credit for certain campaign contributions. Congress should permit a 100% credit for contributions totaling up to \$100. The credit would be available for contributions to candidates and the various types of political committees allowed under current law. Incentives for voluntary campaign contributions are vastly preferable to taxpayer financing which, whether by "voluntary" check-off or otherwise, places a burden on all taxpayers and diverts federal revenues from other competing uses.

3/17/87

Appendix 6A

Money and Politics:

Campaign Spending Out of Control

The Center for Responsive Politics was founded in January, 1983, to help rebuild public confidence in Congress. This fourth publication by the Center for Responsive Politics updates the data from its first Campaign Spending monograph to cover every general election race from 1974 to 1984. Included is the total amount spent, the total PAC dollars, and information on incumbents, challengers, and open seats. The source for all but one of the figures in the charts and tables in this monograph is the Federal Election Commission.

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dures." Incumbents might consider ways to conduct their official business in order to maximize their contributions. At the same time, the burden of campaigning frustrates candidates of modest means, while encouraging wealthier or "well-connected" candidates to run — whether they are qualified or not. As Senator Gary Hart (D-CO) told the Senate Rules Committee in 1985, more expensive campaigns can encourage candidates to take special interest money. Said Hart: "My creditors can testify how hard it is to meet today's campaign costs relying only on contributions from individuals."

An examination of the statistics supports the notion that special interest giving has increased dramatically. PACs gave almost \$113 million to federal candidates in 1984 — a tenfold increase over the 1974 total. Increases in so-called "independent" expenditures are even more dramatic: over 1050% in just eight years. Another new category of political funds commonly known as "soft money" came into full bloom in 1980, but unlike other kinds of political money, these funds are not disclosed at the FEC. Still, while tracking soft money may be difficult, there are some rough estimates on its growth. In 1980, a little over \$19 million in soft money was spent, while in 1984 — depending whose figures you use — spending ranged from \$20 to perhaps as high as \$50 million.

Defenders of current campaign laws and practices argue that the way we presently fund our elections is necessary to "make democracy work." But our democracy has a large number of citizens who worry about the impact of all this money. A 1983 Harris survey showed campaign spending was viewed as a "very serious problem" by 62% of those surveyed, with another 29% saying it is a "somewhat serious problem." Moreover, 84% of those surveyed believe those who contribute large sums of money have too much influence over the government. Simply put, as election costs spiral out of control, more and more Americans believe their government is on the auction block, available to the highest bidder.

Even politicians are cynical about the "raise and spend" cycle. A growing number of congressional retirees are citing the money cycle as one good reason to get out of politics. Former House Rules Committee Chairman Richard Bolling (D-MO), upon leaving office after 34 years, said one reason he wanted to get out was "I have to go to a good many more fundraisers and parties than I want." Former Representative William Brodhead (D-MI) was even more direct in talking about his retirement: "You've got to have your hand out all the time. The PACs have the money and that's where you've got to go to get it. They've gotten more stringent. They want votes for their money."

The Center for Responsive Politics believes that realistic, responsible reform of the campaign laws is necessary and would go a long way toward restoring public confidence and public participation in the election process. To that end, this monograph is dedicated.

2

Introduction

It has been a little more than ten years since Congress passed the most comprehensive campaign finance reform in the nation's history.

These laws have done much to add openness to our elections, by disclosing most of the sources and uses of political money and by reducing some of the influence of large contributors and special interests. Yet in the same period, the cost of all elections in the United States has approached the two billion dollar mark, as campaign spending has doubled at twice the rate of inflation. These costs, combined with the enormous effort needed to raise funds and the ever increasing numbers of interests willing to give money, threaten the integrity of political campaigns and the governmental process itself.

Today, some candidates for state offices spend well in excess of what it cost to run for Congress just a few years ago. In California, for example, several candidates for the state legislature spent \$1 million or more in 1984 — and in just two years, this whole cycle will begin again. On the federal level, congressional campaign spending went from \$77 million in 1974 to \$574 million in 1984 — a more than 385% increase. This "raise and spend" cycle forces candidates to secure ever increasing sums of money by devoting more and more time solely to fundraising.

Why this increase in money? Principally, it stems from a greater willingness among campaigns to rely less on traditional political tools, the grassroots networks, canvassing, or rallies, in favor of more expensive, sophisticated techniques. These new techniques include polling services, computers, direct mail, and "high tech" advertising. Many candidates and parties believe that if they do not use these costly techniques, they will be at a severe disadvantage. As a result, political adversaries find themselves in a "raise and spend" cycle to outdo each other to take no chances in seeking political victory. Meanwhile, many incumbents who do not face serious opposition also participate in the "raise and spend" cycle, either to discourage a challenger or to collect funds for distribution to "needier" candidates.

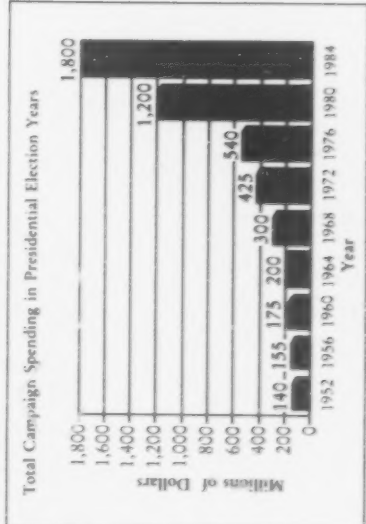
The "raise and spend" cycle has had a profound impact on the political process. Political campaigns keep getting longer and longer as candidates need the time to maximize their efforts. Financial demands force candidates to spend less time with the voters whenever additional funds are needed. Barry Goldwater (R-AZ), speaking before the Senate Rules Committee in 1983 said "unlimited campaign spending eats at the heart of the democratic process" because "it causes elected officials to devote more time to raising money than to their public

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1.

What America Spends on Elections

In 1984, the money spent on all elections — presidential, congressional, state and local — totaled \$1.8 billion, over four times the 1972 total of \$425 million. Campaign money has always been important, but the increased use of television, computers, direct mail and many other costly innovations has made money less the “mother’s milk” and more the “manna” of American politics. One statistic tells the story: from 1974 to 1984, while consumer costs were doubling, campaign spending more than quadrupled.



Source: Herbert Alexander, Cuzner's Research Foundation

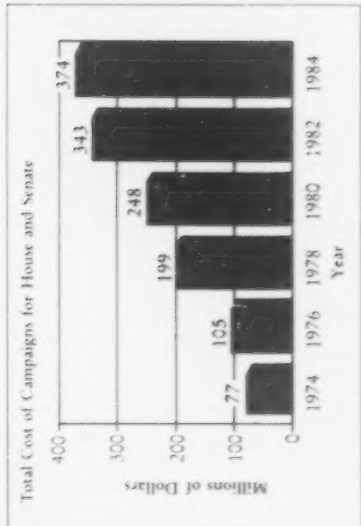
Longer and longer campaigns add to the costs. Candidates often turn their new campaign committees before the most recent winner has settled in down in Washington. In fact, except for incumbents running for reelection, every presidential winner since 1968 had been running for the job full time for several years, while many of the challengers did the same. Congressional campaigns used to last only a few months; now, Senate and House incumbents start pay-

ing and spending reelection funds as soon as they take office. Hopetal office seekers are advised to try to keep up with this “raise and spend” cycle in order to have any chance of winning a seat in Congress.

Even the costs of running a losing campaign can be staggering. Worse, the political money cycle often baunts the losers long after they have gone on to other duties. Congressman Morris Udall (D-AZ) spent years retiring his 1976 presidential campaign debt — in addition to his service as a member of Congress. Today, Senators John Glenn (D-OH) and Gary Hart (D-CO) face the same prospect as they try to retire their 1984 presidential campaign debts.

A. House and Senate Campaigns

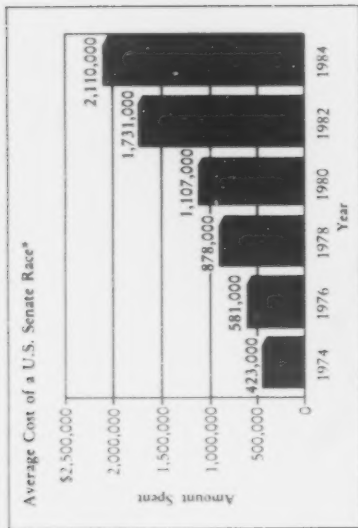
The total bill for the 1984 campaigns for House and Senate was just under \$174 million. That total accounts for more than 2,000 candidates in 468 House and Senate races. By comparison, the total for House and Senate races in 1974 was \$77 million — a 386% increase in only ten years.



Source: Federal Election Commission

Average spending in House races among major candidates increased by over 400% in the eight years between 1974 and 1982, while increasing only 24% between 1982 and 1984. The average race cost \$217,000 per major party candidate, the 435 winners spent an average of \$288,000. However, the reason for this decreasing rate of growth is not because House candidates are spending less, rather it is because House elections are becoming less competitive.

Open seat contests, traditionally the most expensive, were down, with only 27 in 1984, compared with 58 in 1982. 1984 also had 329 “safe seat” elections — elections where a candidate wins with 62% or more. Most observers agree many of these “safe” incumbents began raising large war chests very early in



*All calculations were derived from Federal Election Commission figures.

In 1978, Jesse Helms (R-NC) made headlines by spending an unprecedented \$7 million to win reelection to the Senate. In 1984, Helms set a new all time spending record of almost \$16.3 million. Three other Senate candidates also passed the \$7 million mark: Jay Rockefeller (D-WV) at a little over \$12 million; Helms' challenger, Jim Hunt (D-NC) who spent a little over \$9.4 million, and Phil Gramm (R-TX), who also spent a little over \$9.4 million.

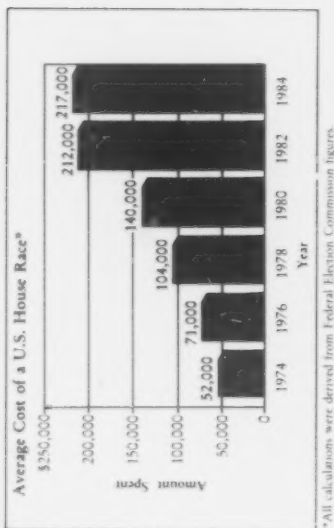
Top Ten Senate Campaign Spenders

Senator	Total Spent	Percentage of Vote
Jesse Helms (R-NC)	\$16,399,387	52%
Jay Rockefeller (D-WV) #	12,057,039	51%
James Hunt (D-NC) *	9,461,924	48%
William Phil Gramm (R-TX) #	9,452,357	58%
Rudolph Boschwitz (R-MN)	6,022,365	58%
Lloyd Alton Doggett (D-TX) #	5,889,458	41%
Charles H. Percy (R-IL)	5,296,561	48%
Paul Simon (D-IL) *	4,581,252	50%
Bill Bradley (D-NJ)	4,566,758	64%
Raymond Shamie (R-MA) #	4,180,961	44%

*Indicates challenger

#Indicates open seat candidate

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*All calculations were derived from Federal Election Commission figures.

ward off any potential challengers. In fact, 1984 was a bad fundraising year for House challengers in general, as only Andrew Stein (D-NY) made it to the top ten House spenders' list. Stein was also the only loser to make the list, while Tommy Robinson (D-AK) was the only open seat candidate on the list. Interestingly, of the remaining eight winning incumbents on the top ten spenders' list, only four were involved in close races.

Top Ten House Campaign Spenders

Member	Total Spent	Percentage of Vote
Andrew Stein (D-NY) *	\$1,779,281	43%
James R. Jones (D-OK)	1,436,591	52%
William Green (R-NY)	1,120,782	56%
Robert K. Dornan (R-CA) #	1,023,021	53%
Ronald V. Dellums (D-CA)	981,171	60%
Joseph P. Addabbo (D-NY)	936,963	82%
Jack M. Fields, Jr. (R-TX)	934,921	64%
Tommy F. Robinson (D-AR) #	917,467	47%
Bruce A. Morrison (D-CT)	913,027	52%
Stan Parriss (R-VA)	863,489	55%

*Indicates challenger

#Indicates open seat candidate

The cost of competing for a Senate seat, however, continued to rise dramatically. In 1974, the average cost of a Senate contest was \$423,000 per major party candidate; by 1984 it was \$2,110,000 — an almost 400% increase in just 10 years. Most recently, there was a 22% increase in Senate spending between 1982 and 1984. The 33 Senate winners in 1984 spent an average of almost \$3 million.

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House of Representatives Campaigns

	Average \$ by Winners With 55% or Less	Average \$ for All House Campaigns	Average \$ by Losers With 45% or More
1974	93,000	52,000	88,000
1976	124,000	71,000	134,000
1978	193,000	104,000	227,000
1980	311,000	140,000	247,000
1982	361,000	212,000	323,000
1984	488,000	217,000	383,000

Close Senate races are more difficult to compare, because there are fewer Senate campaigns and one or two extremely expensive races can dramatically skew the average. Thus, Jesse Helms and Jay Rockefeller greatly inflated the average spent by all Senate winners. By the same token, the sums spent by Jim Hunt, Lloyd Doggett and Charles Percy pushed up the figure for the losers.

Senate Campaigns

	Average \$ by Winners With 55% or Less	Average \$ for All Senate Campaigns	Average \$ by Losers With 45% or More
1974	526,000	423,000	352,000
1976	914,000	581,000	998,000
1978	2,023,000	878,000	1,015,000
1980	1,158,000	1,107,000	1,334,000
1982	2,253,000	1,731,000	2,320,000
1984	5,522,000	2,110,000	3,439,000

These figures demonstrate significant increases in campaign costs. While the average House winner spent an average of a little more than \$90,000 in a close contest in 1974, that figure jumped fivefold in just ten years. Even though losing candidates are often outspent in most cases, they, too, must mount costly campaigns. The constant growth of spending in competitive races indicates that by 1986, a candidate in a close House race will likely spend well over half a million dollars to have any chance of victory, while a Senate seat may cost in the neighborhood of four or five million dollars.

In previewing the 1986 Senate races, early financial figures indicate it is unlikely any candidate will exceed Helms' 1984 total. This is mainly because Helms relied heavily on direct mail fundraising, an extremely expensive campaign technique. But while it is unlikely any candidate will pass Helms, it is very likely some candidates may spend \$10 to \$15 million in 1986. Many observers believe Senator Alfonse D'Amato (R-NY) has the best chance of leading the top ten spenders' list in 1986. According to FEC figures, D'Amato was able to raise about \$5 million by the end of 1985.

B. Close Races

To put increases in campaign spending in proper perspective, it is necessary to factor out the less contested races and focus on those where the competition was more substantial. This is because many House and Senate races are, in effect, uncontested. Either the incumbent had no opponent or the opposition was of little consequence. Some candidates feel obligated to spend money in such elections — Representative Connie Mack (R-FL), for example, spent over \$450,000 even though he had no primary or general election opponents. But these campaigns are the exception, not the rule.

Isolating marginal races, however, demonstrates both the rapid increase in political money and its impact on winners and losers. For comparison, we have divided close races into two categories: "contested," where the winners had 60% or less of the vote and "marginal," where the winners had 55% or less of the vote.

This table compares the spending increase in "contested" races, the difference between winners and losers and the average spent in all House elections.

House of Representatives Campaigns

	Average \$ by Winners With 60% or Less	Average \$ for All House Campaigns	Average \$ by Losers With 40% or More
1974	91,000	52,000	79,000
1976	124,000	71,000	115,000
1978	193,000	104,000	174,000
1980	290,000	140,000	225,000
1982	359,000	212,000	275,000
1984	449,000	217,000	337,000

The "marginal" contests demonstrated an almost identical trend, especially for losing candidates.

C. Incumbents and Challengers

While campaign costs may have soared, the advantages of incumbency have remained fairly constant. Incumbents have definite advantages over challengers through their official service perquisites, such as taxpayer supported staffs, free mass mailing privileges, state or district offices, and limited phone and travel allotments, among others. But incumbents also have other significant campaign benefits that come with tenure — name recognition and easier access to contributors.

The following table illustrates the disparity between incumbents and challengers. By 1984, incumbents were spending more than twice what their challengers spent.

House of Representatives Campaigns			
	Average \$ Spent by Challengers	Average \$ Spent by Incumbents	Difference
1974	37,000	54,000	17,000
1976	50,000	77,000	27,000
1978	63,000	111,000	48,000
1980	96,000	169,000	73,000
1982	128,000	256,000	128,000
1984	126,000	277,000	151,000

U.S. Senate Campaigns			
	Average \$ Spent by Challengers	Average \$ Spent by Incumbents	Difference
1974	402,000	556,000	154,000
1976	414,000	628,000	214,000
1978	612,000	1,432,000	811,000
1980	897,000	1,377,000	480,000
1982	1,213,000	1,748,000	535,000
1984	1,042,000	2,485,000	1,443,000

If the "raise and spend" cycle is not broken, this gap between incumbents and challengers will certainly grow much wider — especially since contributors, particularly special interests, prefer to make political investments in the likely winner.

2.

PACs: The New Mainstay of Campaign Money

Concern over the growth and influence of political action committees has been the subject of intense debate for over a decade. The July, 1983, edition of the *Reader's Digest* stated: "The explosive growth of political action committees — special interests groups that funnel millions of dollars into Congressional campaigns — raises a disturbing question: Is our Congress the best we can get... or the best we can buy?" In the same year, Fred Rancey, a board member of the American Medical Political Action Committee, told the Senate Rules Committee that "PACs perform a number of valuable functions in our nation's political process. They provide a means by which individuals can become more actively involved in the political process." This disagreement over whether or not PACs are largely beneficial to the American electoral process will continue, but one thing is certain: PACs are an integral and powerful part of American politics.

Just how powerful PACs have become was evident in 1984. According to a study by the Democratic Study Group, a congressional caucus, PACs are steadily replacing small contributions from individuals. In 1974, 46% of all House contributions and 38% of all Senate contributions came from individuals donating \$100 or less. In 1984, small individual donations provided only 19% of the budget for all House races and 23% for all Senate races. But as the small contributors disappear, more and more candidates have relied on PACs to take up the slack. The Center's research supports the theory that more candidates are relying more heavily on PACs as campaign costs increase. This research shows that in 1974, 28% of all House winners relied on PAC contributions for a third or more of their contributions from PACs. By 1984, however, about 83% of all House winners took a third or more of their contributions from PACs. The following table illustrates the percentage of House candidates in various categories who have received over 30% of their funds from PACs.

PACs have experienced the greatest growth, though every category of PAC has prospered. When the Federal Election Commission was established in 1975, there were 628 PACs. By the end of 1984, the number had mushroomed to 4,029.

Number of Registered PACs: 1974-1984											
Type of PAC	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Labor	201	226	224	234	217	240	297	318	380	378	394
Corp.	89	139	433	550	784	949	1204	1327	1469	1538	1682
Busi.	318	357	489	—	—	—	—	—	—	—	—
Trade/ Misc/tp/ Health	—	—	—	438	453	514	576	616	651	645	698
Non- Conne	—	—	—	110	162	247	376	531	723	793	1053
Cooper. Corp.	—	—	—	8	12	17	42	41	47	51	52
w/o stock	—	—	—	20	24	32	56	68	103	122	130
TOTALS	628	722	1146	1360	1652	1999	2551	2921	3373	3527	4009

In 1974, labor PACs constituted one third of the total. But by 1984, labor PACs were less than one tenth of the total. Both PACs representing unions and trade associations have grown at a steady pace, but they lag far behind the increase in corporate and non-connected PACs. Since 1974, corporate PACs have grown a whopping 1,790%, while non-connected organizations have increased almost ten times in seven years. The reasons behind these differences in growth reflect the varying nature of PACs.

Political action committees affiliated with corporations, labor unions or trade and professional associations are legally known as "Separate Segregated Funds," because monies raised by these organizations must be collected voluntarily and kept in accounts separate from the union treasury or corporate earnings. Segregated funds can use only money collected from employees or members and not from the general public. Among these PACs, labor unions represent a fairly constant number of organizations, permitting only slower growth, although these PACs tend to be much larger than most corporate committees. On the other hand, corporate PACs have increased at a remarkable rate and though smaller, their large numbers allow them to contribute more than any other committee category. Corporate PACs are also capable of continuing at a high growth rate for many years to come. There are more than 50,000 corporations in the U.S. that could create their own political action committees.

Non-connected PACs have no sponsoring organizations, like a company or

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Percentage of House Candidates Who Received 50% or More of Their Funds from PACs

	Democrats	Republicans	Incumbents	Challengers	Winners	Losers
1974	37%	6%	29%	10%	28%	7%
1976	47%	15%	51%	12%	45%	13%
1978	52%	29%	52%	10%	55%	14%
1980	49%	35%	68%	13%	64%	17%
1982	60%	38%	75%	24%	69%	27%
1984	66%	37%	85%	13%	83%	18%

Similarly, in 1974 only 9% of all House winners took 50% or more of their money from PACs. By 1984, their number had grown to 36%.

Percentage of House Candidates Who Received 50% or More of Their Funds from PACs

	Democrats	Republicans	Incumbents	Challengers	Winners	Losers
1974	11%	2%	10%	1%	9%	3%
1976	17%	2%	18%	2%	16%	2%
1978	17%	5%	24%	1%	19%	2%
1980	17%	10%	27%	2%	24%	2%
1982	26%	7%	28%	7%	25%	7%
1984	33%	9%	38%	4%	36%	5%

A. The Growth of PACs

Although some PACs were established as early as 1943, the accelerated growth of PACs dates from the campaign reforms of the 1970's. During the 1972 presidential election, for example, 124 individuals gave \$17 million to help reelect Republican Richard Nixon while Democrats George McGovern received several individual contributions totaling \$200,000 or more. By the early 1970s, the public demanded the power of individual "fat cat" contributors be reduced. Legislators examining possible alternatives to the problem believed a system of PACs operating under federal regulations was a partial solution to reducing the influence of larger individual contributors, while expanding the ability of citizens to contribute to political causes.

The first Federal Election Campaign Act reforms of 1971 institutionalized this new role for PACs in American elections. Legislative activity, court rulings and rapidly increasing campaign costs helped create more and more political action committees. Two types, corporate and the so-called "non-connected"

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an association, hence they can raise money from anybody and many have a strong national base. Non-connected PACs include the National Right to Life Committee, the National Abortion Rights Action League, the Fund for a Conservative Majority, and the Committee for an Effective Congress. Since most non-connected PACs are tied to single issue or ideological groups, their strong growth could continue unabated.

PAC Contributions to Congressional Candidates by Category:

Type of PAC	1972-1984 (in millions)					
	1972	1974	1976	1978	1980	1984
Labor	3.6	6.3	8.2	10.3	13.2	26.2
Business Related	2.7	4.4	10.0	—	—	—
Corporate	—	—	—	9.8	19.2	39.0
Trade/Membership/Health	—	—	—	11.3	15.9	21.9
Non-Connected	—	0.7	1.5	2.8	4.9	10.7
Other	2.2	1.0	2.8	1.0	2.0	3.2
TOTALS	8.5	12.4	22.5	35.2	55.2	83.2
						112.9

In House races, the average total of PAC money spent has risen from \$10,000 in 1974 to \$89,000 in 1984 — an almost ninefold increase. Equally significant, the average House campaign now receives over 40% of its spending money from PACs.

House of Representatives Campaigns

	Average Total \$ Spent	Average PAC \$ Spent	Percent
1974	52,000	10,000	19%
1976	71,000	17,000	24%
1978	104,000	27,000	26%
1980	140,000	42,000	30%
1982	212,000	70,000	33%
1984	217,000	89,000	41%

In Senate races the average amount of PAC money spent has gone from \$47,000 in 1974 to \$405,000 in 1984 — again, an almost ninefold increase.

U.S. Senate Campaigns

	Average Total \$ Spent	Average PAC \$ Spent	Percent
1974	423,000	47,000	11%
1976	581,000	88,000	15%
1978	878,000	119,000	14%
1980	1,107,000	231,000	21%
1982	1,731,000	329,000	19%
1984	2,110,000	405,000	19%

These figures on PAC contributions also include "in-kind service" contributions, a donation of time, expertise, and equipment, rather than money. Many of the larger PACs have the staff and ability to offer temporary campaign workers, computer time, mass mailings or even political consulting. As PACs become more sophisticated, they will very likely increase their use of services in-kind. There are many reasons for a PAC to make the extra effort to help a candidate with services rather than money, but the most compelling incentive for in-kind contributions was explained by Larry Sabato in his book *PAC Power*:

In-kind gifts bring the PAC staff and the candidate's staff together. The personal relationships thus established become very useful if the campaign is victorious and, as usually happens, campaign staffers become office staffers. PACs are then in a better position to influence the officeholder's legislative aims.

B. PACs and Incumbents

Much of the concern about the influence of PACs is due to the level of support given to incumbents as opposed to challengers. Most PAC contributors generally prefer to invest their money with the likely winner or with someone who already has power, so it is no surprise that in 1984 federal incumbents received 72% of all PAC contributions. The 56 candidates in the open seat races took 11% of the total, while 388 major party challengers received only 16% of all PAC contributions. PACs desiring to influence House races gave almost 75% to incumbents and those contributing to Senate campaigns favored incumbents with 61% of all contributions.

In the House, the incumbency factor yielded a two and a half to one edge against challengers in 1974, but grew to well over four to one by 1984. Significantly, PAC contributions now account for 50% of all campaign spending by House incumbents.

House of Representatives Campaigns

	Average PAC \$ by Incumbent	Average PAC \$ by Challenger	Percent of Total	Percent of Total
1974	12,000	5,000	22%	14%
1976	25,000	8,000	32%	16%
1978	38,000	11,000	34%	17%
1980	62,000	20,000	37%	21%
1982	101,000	31,000	39%	24%
1984	137,000	30,000	50%	24%

*Figures in parentheses indicate average spent.

The incumbency edge also rose for Senate candidates, though not as dramatically. In 1974 incumbents had a slightly less than three to one advantage over the competition. By 1984, this number shifted to slightly over three to one.

U.S. Senate Campaigns

	Average PAC \$ by Incumbent	Average PAC \$ by Challenger	Percent of Total	Percent of Total
1974	71,000	24,000	13%	6%
1976	116,000	51,000	19%	13%
1978	194,000	74,000	14%	12%
1980	304,000	184,000	22%	21%
1982	450,000	167,000	26%	14%
1984	615,000	194,000	25%	19%

*Figures in parentheses indicate average spent.

C. The Impact of PACs

With PACs increasingly involved in the political process, more and more questions are being asked about their necessity, their impact, and their influence.

Defenders of PACs claim they fulfill their role as an outlet for citizens' and interest groups' greater participation in the political process; therefore, a truly pluralistic society such as ours should encourage even more PACs. Herbert Alexander of the Citizens Research Foundation put it this way: "A direct dialog between candidates and individual voters without interest group influence is not possible in a representative democracy."

Senator Phil Gramm (R-TX) put it even more strongly: "PACs have redistributed political influence. They've taken power away from the smoke-filled room."

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Critics, on the other hand, contend that PACs have taken power out of one smoke filled room and put it in another, while discouraging smaller contributors and grass roots campaigns. The Democratic Study Group report mentioned at the beginning of this chapter came to a distressing conclusion: "PACs are displacing individuals as the primary source of funds...[the decline of small contributors] cannot help but have a profound influence on Congress — especially when 'grass roots-based' funding is replaced by funds from interests outside the member's district." This conclusion is especially disturbing when one considers PACs were supposed to supplement and broaden — not replace — a citizen's ability to participate in politics.

Another charge frequently leveled at PACs is that they "buy" politicians or legislation. But the situation is not that extreme. Certainly evidence suggests that at the federal level at least, the vast number of competing groups — to some extent, cancel out each other's interests. But if PACs cannot "buy" the policies they are interested in, they can certainly "protect" their interest by using their money to gain access to legislators. And if more and more PACs prefer to use money — and not persuasion — to make their point, the consequences will be profound. In 1985, Senator David Boren took to the Senate floor to tell his colleagues that: "We cannot expect members of Congress to act in the national interest when more and more [candidates] are being financed by the special interests." Certainly the special interests believe their contributions are well spent.

For example, when defense spending was on the increase in the early 1980's, the top 20 defense contractors increased their PAC contributions 225%, giving over \$3.6 million during the 1984 campaign. These contractors gave \$440,000 to members of the Senate Armed Services Committee, the panel that must authorize monies for every defense project. Not so surprisingly, almost 20% of that money went to Senator John Warner (R-VA), the man who would be the likely replacement after the Committee's current Chairman, Barry Goldwater (R-AZ) retires in 1986. Referring to these contributions, Phil Stern, Director of Citizens Against PACs, told the Senate Rules Committee in late 1985 that "it would be unthinkable for a judge to accept money from a defendant or a plaintiff, or any other party with a stake in that...decision. But, it's not unthinkable with Congressmen and Senators. They do it every day. The members of the defense-related committees sit as judges of how much the Pentagon may spend and for what. Yet the 'judges' on those committees routinely accept campaign contributions from companies with an immense stake in their decisions."

Or consider tax reform. As soon as it became apparent Congress would be writing a tax reform package, PAC contributions from anyone with an interest in tax law came pouring in. In the first six months of 1985, the 56 members of the House and Senate tax writing committees received \$10 million in contributions — with almost \$4 million from PACs.

The House's chief tax architect, Ways and Means Committee Chairman Dan Rostenkowski (D-IL), faces virtually no opposition in his Chicago district, but he does raise money for other candidates through his own PAC, the Chicago Campaign Committee. Rostenkowski's PAC raised \$83,500 in a single day with

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a \$500 a ticket fundraiser that attracted other PAC contributors interested in meeting him.

The Chicago Campaign Committee is an example of the versatility and influence of PACs. PACs are such a valuable political resource, more politicians are forming "personal" PACs to supplement their other campaign committees. For example, while Jesse Helms was raising over \$16 million in 1984, his affiliated PAC, the National Congressional Club, was also raising another \$5.5 million. President Reagan's PAC, the Citizens for the Republic, weighed in at close to \$3.9 million. Senator Edward Kennedy (D-MA), raised \$3.5 for his Fund for a Democratic Majority, and New York Congressman Jack Kemp's (R-NY) PAC, the Campaign for Prosperity, collected a little less than \$2.2 million. Not to be outdone, Senator Robert Dole of Kansas, raised some \$1.3 million for his PAC, Campaign America. In our 1983 report on campaign spending, the Center quoted Senator Dole as saying "When these PACs give money they expect something other than good government in return."

3. Independent Expenditures

While federal law imposes limits on the amounts of money individuals and groups may contribute to political campaigns, there are no limits on funds spent "independently" on behalf of a candidate. As defined by law and practice, "independent" expenditures are those made in support or opposition to a candidate, but only if there has been no prior consultation between the spender and the candidate. This ability to spend unlimited amounts of money to influence an election has encouraged a new group of PACs operating outside conventional political channels.

Although Congress tried to place "independent" expenditures under federal limits, the Supreme Court ruled in 1974 that such expenditures were an expression of free speech and, under the First Amendment, they could not be limited.

Since the high Court's ruling, subsequent legislation and regulation has been enacted in an effort to define and regulate financial activity deemed "independent." This effort included a law limiting independent expenditures on behalf of publicly financed presidential candidates to \$1,000. But this law was inoperative in the 1980 and 1984 presidential elections and was ultimately struck down by another Supreme Court decision, *FEC vs. NCPAC, et al.*

Federal law, however, does require full and complete disclosure of all independent expenditures. These data clearly show these expenditures are growing at a rapid rate — well over 1000% since 1976.

The chart also indicates some other interesting trends. In presidential election years, the bulk of independent spending is on behalf of presidential candidates, and is largely positive. In congressional election years, there is a much greater willingness to spend money on negative campaigns.

Two explanations can be offered for these trends. In presidential contests, candidates who accept public financing must adhere to strict contribution limits. Independent expenditures, however, have been used as a way around these restrictions — thus, wealthy individuals and organizations can use independent expenditure PACs as a conduit for "fat cat" style contributions. This is an important consideration, for while federal financing of presidential candidates is supposed to guarantee all candidates' work with roughly equal sums of money, independent expenditures can give a greatly favored candidate an extra edge. In 1984, for example, \$15.8 million was spent independently on Ronald Reagan's behalf and only \$2.5 million for Walter Mondale. In either case, most groups

feel compelled to emphasize the positive aspects of their favored presidential candidates.

Independent Expenditures				
	1975-76	1977-78	1979-80	1981-82
Total \$ Spent	2,033,207	317,455	16,084,273	5,700,000
Total \$ Spent for Presidential	1,646,540	0	13,745,444	0
Total \$ Spent for Congressional	385,667	317,455	2,338,829	5,700,000
# of Committees	—	82	218	92
# of Candidates	144	215	425	386
Percent Positive	97	76	86	20
Percent Negative	3	24	14	80
				15

Why negative advertising is used more often in congressional campaigns, however, is more difficult to determine. One common explanation is that this kind of advertising is often directed against incumbents because many independent expenditure groups believe they can counter on negative advertising had its origins with negativism. In any event, this reliance on negative advertising had its origins when the National Conservative Political Action Committee (NCPAC) spent huge sums of money on selected Congressional races in 1980. NCPAC's success in those races prompted several other organizations to copy its style to the point where 80% of all independent expenditures in 1982 were negative. That negative independent expenditures are largely a congressional phenomenon is born out by some statistics in 1984. Of all the money spent in the presidential race, only 4.5% was used negatively, while about 44.2% of all independent funds spent on congressional contests was negative in content.

Independent expenditures are interesting for another reason — whether used positively or negatively against candidates, these expenditures are also used to advance a sponsoring organization's cause. For example, NCPAC will attack a liberal incumbent to advance the conservative movement, while Independent Action will send letters urging voters to support its favored candidates. The

added fact that these independent committees also operate outside any federal limits means they also operate outside conventional political channels. These groups are not accountable to candidates, to parties or to the voters. Instead, they are responsible only to themselves and their financial backers — and their only standard is success. As such, independent expenditure groups are a "wild card" in the election process. Some groups actually enjoy that distinction. Said NCPAC's director, Terry Dolan, "One thing we've done is wreck the federal election laws and thank God for that."

Independent expenditure groups can also put candidates in an awkward position. Candidates may reject a group's support or denounce their attacks on an opponent, but there is very little a candidate can do to stop an independent PAC's activities. In fact, short of libel, candidates have little, if any protection, against any unauthorized or even inaccurate claims made by an independent PAC. At the same time, a candidate can deny any responsibility for independent activity and still reap the benefits of any additional support or "opposition baiting."

In the final analysis, independent expenditure committees have undermined the effectiveness of federal campaign laws while adding a new element of instability to America's electoral process. Certainly, the activities of these groups will be a nettlesome consideration in any attempts at campaign reform.

4.

Soft Money

As the clamor for more political money grew throughout the 1970's, new sources of funds were sought. This search for more money uncovered a loophole in the Federal Election Campaign Act (FECA), commonly known as "soft money." Soft money is unlimited, largely uncontrolled, and virtually undisclosed in any meaningful fashion. In the last few elections, national political parties have transferred tens of millions of dollars — the exact amount will never be known — to state and local parties to cover their overhead expenses. These transfers free up the money collected by the state and local parties for indirect — or even direct — support of federal election activities.

Soft money means big money is back in American politics. Though federal law prohibits gifts of more than \$20,000 to national political parties, several individuals gave \$100,000 to the Democratic Party for "indirect" purposes in 1984. Moreover, the names of these individuals were disclosed only by accident. The soft money loophole works in the same fashion for PACs. Two union PACs alone gave the Democrats well over \$300,000. Some unions and corporations gave the parties money from their treasury funds, even though federal law prohibits such contributions. The Republicans, for example, took as much as \$45,000 and several \$10,000 contributions directly from corporate funds. Since the parties promised to use this money for "non-federal" purposes, corporations and labor unions were free to give additional "federal" contributions from their PACs.

How did soft money come about? Lawyers for the national party committees claim the federal law's definition of "contribution" and "expenditure" as the legal basis for soft money. Federal law only covers money raised and spent in federal elections. Thus, party lawyers claim soft money is legal, because the money goes only to help rebuild state and local party organizations at the grass roots level. Even though parties could always have raised soft money, there were few efforts to do so prior to 1980. But a 1979 amendment to the FECA became the inadvertent impetus for soft money. These 1979 amendments were designed to define more clearly the role of state and local parties in federal elections. But because these amendments did recognize a difference between "federal" and "non-federal" contributions, party lawyers and fundraisers were alerted to a loophole they did not use before.

While rebuilding parties at the grass roots level is a legitimate and laudable goal, today's soft money is designed to benefit federal, not non-federal, entities. Soft money supporters who argue the opposite ignore several facts. First, the national parties receive huge sums of money from national donors; then they

use national criteria to decide which state and local organizations get the money. Quite often, the money goes only to those regions with important federal contests. Simple logic demands that if the parties were truly interested in rebuilding state and local parties "at the grass roots," they would be better off improving the ability of state and local parties to raise their own money without waiting for a national party handout.

Second, though the operators of one or two accounts have voluntarily disclosed their funds, soft money entrepreneurs have interpreted the law to say they do not have to disclose any money collected for "indirect" or "non-federal" purposes. This interpretation has enabled national parties to raise millions of dollars without telling anyone their financial sources. If a small portion of the money should surface in a state account, it will be disclosed only by the name of the national account — the names of the individuals, corporations, unions, or PACs who gave the money will never be revealed, except by accident. Since the national parties claim soft money is used to rebuild state and local parties and to promote greater citizen involvement in politics, this unwillingness to disclose — or even discuss — these soft money operations seems strange indeed.

Third, the history and current operation of soft money accounts contradicts any claim that these accounts are "non-federal" in nature. Fundraisers for national parties tell prospective donors the money will help federal candidates. Further, many state party officials have directly or indirectly acknowledged the money can be used for federal purposes. Though the amounts and use of soft money is largely undisclosed, the Center has researched this issue thoroughly, allowing us to get a better idea of the size of the problem.*

In 1980, the Republicans spent roughly \$15 million in soft money to the Democrats \$4 million. Although well organized, the Republican effort that year was primitive compared to the later soft money operations. For example, instead of relying solely on contributions to a national party clearinghouse so the money would later be transferred to state and local operations, Republican fundraisers would occasionally let a donor give directly to a state party. Nevertheless, the 1980 soft money operation was run from an office in Republican headquarters in Washington, where fundraisers encouraged donors by advising them their money would help elect Ronald Reagan and a Republican Senate.

Figures for 1982 are sketchy, as soft money operations became more sophisticated. One indicator of this new sophistication was the use of "generic commercials" by both parties. Here again, a loophole enabled both parties to finance multi-million dollar advertising campaigns. While these ads did indirectly support federal and non-federal activities, they were targeted to key states or Congressional districts to bolster support for federal candidates.

In Washington state in 1983, a special election to fill a Senate seat left vacant by Senator Henry Jackson (D-WA) brought \$2.7 million in both hard and soft money to the state in a little more than six weeks. While the Senate race was

*For more detailed information on the history and uses of soft money, see the Center's monograph entitled "Soft Money — A Loophole for the '80s."

the only statewide office up in that election, national party officials claim their principal interest was in the smattering of state and local partisan races held only in selected counties.

No one knows exactly how much soft money was spent in 1984. Depending on whom you believe, the Democrats mounted either a \$10 million or \$30 million campaign, while the Republicans spent either \$10 or \$20 million. In any case, soft money reached new levels of sophistication as fundraisers told donors that the old contribution limits no longer existed. In one case, the Center found a contributor invited to a special meeting at the Democratic convention in San Francisco. At this meeting the contributor was told not to worry about any contribution limits, instead he should decide how much he wanted to give and someone from the party would tell him how to make out the checks. Republican and Democratic fundraising efforts used Reagan and Mondale — and not state and local candidates — to urge donors to give to soft money funds. Moreover, 1984 saw several state parties use the soft money allocations to free up money for federal purposes. This was especially true of one committee, the National Republican Senate Campaign Committee (NRSC) which used almost \$1 million in soft money to supplement their federally regulated "hard" money effort. For example:

- Michigan Republicans were able to finance a \$40,000 advertising campaign against incumbent Senator Carl Levin after receiving a \$40,000 "party building" contribution from the NRSC;
- Arkansas Republicans received a similar contribution to finance a \$44,791 direct mail campaign against another Senate incumbent, David Pryor;
- In Nebraska, Republican state party leader Kermit Brashear admitted to the press his party would receive \$186,000 from the national party and the NRSC in an effort to defeat incumbent Senator James Eason.

Up to now, most soft money activity has been run through the national parties. But the evidence from 1984 shows that other committees and candidates considered soft money as a possible supplement to their own efforts. Two parties have raised at least \$20 million in two presidential election years. What even a small portion of the 6,000 federal candidates and PACs can raise and spend in soft money simply boggles the mind.

More can be done to disclose and control the flow of soft money. Simply put, a Federal Election Campaign Act that imposes a \$20,000 limit on party contributions does not expect unlimited contributions from a few "fat cats" to an off-budget account. The Center believes any effort to directly or indirectly influence a federal election should be fully and completely disclosed and that money raised by federal parties for any account should be subject to federal rules and limits. There is much the Federal Election Commission, Congress and the Executive branch can do to bring this new political money under control. But if the effort to close this financial loophole fails, the flow of soft money could gut the campaign finance reforms of the last decade.

5.

Conclusion

Every election the public is inundated with news reports on the costs of being elected. The result of this, according to opinion polls, is a strong conviction that campaign spending is excessive and out of control.

But simply because campaigns require money is not an evil in and of itself. Some might agree with John Quincy Adams that "to pay money for securing [the presidency] directly or indirectly is incorrect in principle." However, practical reality and the unique development of politics in the United States has made the use of some money a necessity and the candidate who wants the attention of the voters must be prepared to spend something. Moreover, there will always be individuals and groups with a need to make their voices heard. Contributing to political campaigns is both a right and a legitimate means for achieving their goals.

But the root of the problem is not the participation of a number of interest groups in the political process, rather it is the astronomical costs of modern campaigns. The fallout of all this money are the lobbyists who rely on PAC money, rather than persuasion, to make a point. Or the candidate who feels compelled to spend several millions to be elected to an office paying about \$70,000 a year. Or the voter who decides not to make a small contribution or join a grass roots campaign because the "big money candidates" always win. The real danger then, is using money as a substitute and not a supplement to all other political activity.

Although campaign finance reform has not been a priority in the 99th Congress, scattered bills and hearings have considered the impact of the "raise and spend" cycle. But if many members of Congress agree campaign finance reform is a laudable goal, few can agree on what to do about the problem. The legislation that has been introduced reveals a wide range of approaches to the problem, including a study commission, a bill limiting PAC contributions, increases in some contributor limits, overall spending limits on campaigns, reform of candidate PACs, reform of the lobbying registration acts, controls on political advertising, and proposals for greater contributor control over money given to PACs.

This wide variety of approaches suggests fundamental disagreement on what change is needed and what legislative solutions would effectively control the problem. There are two reasons for this disagreement. The first is a legitimate concern that a poorly conceived reform might be worse than the problem. Considering the unanticipated consequences of the reforms of the 1970s, there is

Appendix A

A History of Campaign Reform

The extent of electoral competition between business and labor has closely paralleled legislation passed by Congress to define the role of special interest participation in federal elections and control the financing of campaigns.

As early as 1907, President Theodore Roosevelt saw the need for federal election reforms. Roosevelt called for public financing of congressional and presidential elections. Congress responded to Roosevelt's call for reform by passing the Tillman Act of 1907 to prohibit business groups from making contributions to federal candidates. Congress extended campaign reform with the Federal Corrupt Practices Act of 1925, which placed limits on contributions and required disclosure of receipts and expenditures by federal candidates.

Although labor, as a result of these acts, was allowed to contribute to federal candidates, it was not until 1936 that unions made a significant effort to influence elections. In 1936, organized labor contributed over \$750,000 to Democratic candidates. Most of the funds were derived from union dues. Union involvement in federal elections continued to grow until Congress passed the Smith-Connally Act of 1943. The Smith-Connally Act barred unions from making direct contributions in federal elections from their union treasury funds. Since this Act was scheduled to expire with the end of World War II, Congress included a section on campaign finance in the Taft-Hartley Act of 1947. Taft-Hartley made permanent the ban on contributions and expenditures by unions and corporations. Later these same limitations were extended to the primaries and conventions.

The Tillman Act, the Federal Corrupt Practices Act, and the Smith-Connally Act had but a limited impact on the campaign activities of business and labor. The laws were easily circumvented and poorly enforced. Separate accounts were organized — forerunners of today's political action committees (PACs) — and contributions were solicited from members solely for political purposes.

In 1943 and 1944, the Congress of Industrial Organization (CIO) established the first political committees — the CIO-PAC and National Citizen's PAC. In 1944, CIO-PAC raised \$647,903 and spent \$478,499 on primaries and conventions. In 1947, the AFL organized the Labor League for Political Education. The Committee on Political Education (COPE) came into existence in 1955 after the merger of the AFL-CIO. Labor was able to establish these PACs by using political funds instead of union dues. After 1955, labor PACs began to flourish. Seventeen labor PACs contributed \$2.1 million in 1956. Disbursements of \$7.1 million were made by 37 Union PACs by 1968. By 1982, 288 labor PACs were able to contribute \$20 million to federal candidates.

Corporations began to organize formal PACs in the 1960s. Prior to this, most business contributions were made directly to the candidates by wealthy individuals and executives. In 1956, for example, 199 executives from 225 corporations contributed over \$1.9 million to federal candidates. AmPAC, the first major business PAC, was established in 1961 by the American Medical Association.

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a legitimate concern any new reforms might not work as intended. This problem should not stop the drive for reform, however, rather, it should remind legislators that thoroughness is necessary in considering any change.

The second reason for these disagreements over reform is that many of the proposed solutions address the problem in a piecemeal fashion — allowing some legislators to object to some reforms as favoring one side over the other. Any solution designed to limit PAC contributions, for example, might produce some objections from those incumbents who have an edge in raising such money. Similarly, keeping the soft money loophole or proposals designed to increase party spending in an election tend to favor the Republican Party, which in the last few elections, has held anywhere from a three or five to one fundraising advantage over the Democratic Party.

These disagreements suggest that any new reform can only be achieved by bipartisan investigation to isolate the real problems of political money, while building a consensus for reform. Such a reform package would ideally cap — or at least slow — the rise in campaign spending, free up candidates from spending so much time raising money, so they can spend more time with the voters, and create a better combination of financial resources, one that would encourage small contributors, while making politicians and political organizations more accountable.

While these suggestions may sound like fanciful, unachievable goals, they are not. The crowning achievement of the Federal Election Campaign Act, for example, was the revolution it created in the way we elect a President. The FECA's reforms encouraged a wider variety of presidential candidates to seek support, provided a more equitable means of raising and spending campaign funds, and, most importantly, controlled the principal costs in presidential races. In fact, in December, 1985, the Commission on National Elections announced that, according to its research, the cost of running for President has actually decreased in real terms since 1972.

If it can be done for one office, there is no reason all political offices cannot be liberated from the "raise and spend" cycle.

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to presidential primaries and nominating conventions. Important provisions were:

- Established the Federal Election Commission and guidelines for its operation.
- Set contribution limits to candidates of \$1,000 per individual per election and \$5,000 per political action committee per election.
- Set spending limits for presidential, House and Senate primary and general elections.
- Repealed the media spending limitations of the 1971 FECA for candidates.
- Established national party contribution limits.

In 1975, the Federal Election Commission was asked by SunPAC (Sun Oil Company) to clarify how PACs could be run. The FEC ruled that corporate PACs could solicit stockholders, management and supervisory personnel for voluntary contributions and that corporate monies could be used for the administration of the PACs. Thus, the cost of running the PAC would not have to come out of the funds raised but could be paid for by the general corporate funds. This ruling also applied to PACs run by labor unions and other affiliated membership organizations. However, it did not apply to independent or ideological PACs. This ruling confirmed and clarified the Hansen Amendment of 1971.

Several provisions of the 1974 FECA were challenged in the 1976 Supreme Court case, *Buckley v. Valeo*. Senator James Buckley, joined by former Senator Eugene McCarthy and philanthropist Stewart Mott, argued that the 1974 law was an infringement on free speech. They questioned the sections of the law that set ceilings on expenditures for House and Senate races as well as the section that placed limitations on what wealthy individuals could spend on their own races. In addition, Buckley argued that expenditures made "independent" of a candidate or candidate's committee should not be subject to the limitations. The Supreme Court agreed and thus groups and individuals are allowed to spend as much money in support of or opposition to a candidate as long as those funds are not in coordination with the respective campaign. The Supreme Court, therefore, struck down many of the limitations imposed by the 1974 law and held, in effect, that the right to spend was equivalent to the right to speak.

After the *Buckley v. Valeo* decision, Congress once again acted to reform existing federal campaign finance law.

1976 FECA Amendments

- Established contribution limit levels to \$25,000/year for individuals; \$5,000/year to political action committees and \$20,000/year to the national parties.
- Limited the amount national party campaign committees could give to candidates.

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The National Association of Manufacturers organized BiPAC in 1963. BiPAC spent \$203,283 and AmPAC \$402,052 during the 1964 elections. By the 1968 elections, both PACs would more than double their respective disbursements.

The lack of enforceable reporting requirements, the revelations concerning Ambassadorial appointments to those contributing hundreds of thousands of dollars, and the concern about the lack of meaningful enforcement of limits on contributions were to bring about new efforts for reform. In 1971, the Federal Election Campaign Act superseded previous federal campaign regulations, but passage of this legislation proved to be the catalyst for the near exponential growth of political action committees.

Key Features of the Federal Election Campaign Act

- Put a limit of \$50,000 on the amount a candidate or the candidate's family could contribute to his campaign for President or Vice President; \$35,000 to Senate races and \$25,000 to House races.
- Limited the total amount that a federal candidate could spend on media advertising to 10 cents per eligible voter or \$50,000, whichever is greater.
- Required that political committees with receipts over \$1,000 per year file a statement of organization.
- Required political committees to report all individual expenditures in excess of \$100 per year.
- Required disclosure of all contributions in excess of \$100 made to committees or candidates.
- Required candidates and committees to file reports of contributions and expenditures.
- Required television stations to sell candidates time at the lowest unit cost provided commercial advertising customers.

An important amendment to the FECA was drafted by the AFL-CIO and key business groups. The Hansen Amendment enabled union and corporate treasury money to be used for overhead in operating PACs. It also provided labor and business with the right to solicit voluntary funds from members, stockholders and employees. Thus unions and business financial involvement in federal elections was not only legalized but in a very real sense institutionalized.

The Revenue Act of 1971, a companion bill to the FECA, provided public funding of presidential election campaigns. It offered tax credits or deductions in exchange for political contributions to candidates for local, state or federal office. It allowed an annual \$1 check off on income taxes to a general fund to be disbursed to presidential and vice presidential candidates. And it established guidelines for the Presidential Election Campaign Fund.

In 1974, amendments were added to the Federal Election Campaign Act. They established new contribution and spending limits and extended public funding

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APPENDIX B

A summary of campaign finance legislation proposed in the 99th Congress, prepared by the Congressional Research Service, Library of Congress.

Legislation

H.R. 122 (Jacobs D-IN)

Amends the Federal Election Campaign Act of 1971 to provide for public financing of advertising and related expenses in campaigns for the House of Representatives and to prohibit contributions by multicandidate political committees to candidates who accept such financing.

Provides that each candidate in an election for the House of Representatives shall be entitled to: (1) a 90-minute allotment of television time, divided as the candidate chooses provided that each appearance on television is at least 5 minutes long; (2) an allotment of 135 minutes of radio time, divided as the candidate chooses provided that each appearance on radio is at least 5 minutes long; (3) an allotment of 126 column inches or one page, whichever is greater, of newspaper advertising, divided as the candidate chooses provided that no individual advertisement uses less than ten column inches or (4) an allotment of any costs incurred in the installation of telephones and other equipment for a question-and-answer format if such a format is used during a candidate's allotment time on television or radio. Provides that a candidate for the House of Representatives may be eligible to receive such a campaign allotment by arranging in advance for each advertisement and by submitting a schedule of Election Commission no later than 10 days before the election to the Federal Election Commission. Provides that a candidate must certify to the Commission that such candidate will not make expenditures from his personal funds, the personal funds of his immediate family, or funds donated to his campaign committee for any of the purposes for which such candidate accepts such campaign allotment. Provides further that a candidate who accepts any contribution from a multicandidate political committee with respect to an election shall not be eligible to receive a campaign allotment with respect to such elections. Introduced Jan. 3, 1985; referred to Committee on House Administration.

H.R. 123 (Jacobs D-IN)

Amends the Federal Election Campaign Act of 1971 to disallow the personal use of amounts received as contributions (amends 2 U.S.C. Sec. 439a). Introduced Jan. 3, 1985; referred to Committee on House Administration.

H.R. 668 (Hamilton D-IN)

Amends the Federal Election Campaign Act of 1971 to eliminate a provision that permits certain Members of Congress to use excess campaign funds for personal purposes. Introduced Jan. 24, 1985; referred to Committee on House Administration.

H.R. 761 (Stratton D-NY)

Free Political Broadcasting Act of 1985. Provides free radio and television time to candidates for election to Federal office. Provides that the Federal Election Commission shall establish the eligibility of candidates for such free broadcast time. Provides for various allotments of broadcast time to Federal office

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- Limited personal spending by presidential and vice presidential candidates to \$50,000 if they accept public financing.
- Required PACs and candidates to keep accurate records of receipts and expenditures.
- Established further guidelines for the FEC.
- Provided civil penalties for the violation of the FECA.

President Carter signed into law the Federal Election Campaign Act of 1979 on January 8, 1980, to further streamline federal campaign finance regulations. One major provision increased the role of state and local parties in federal elections. State and local parties are allowed to purchase yard signs, buttons, posters, brochures and handbills without coming under federal limitations. Furthermore, state, local and national parties were free to conduct get-out-the-vote drives and voter registration. Conservative estimates for these "soft money" items have been placed in the \$10-20 million range.

Additional provisions of the 1979 Amendments:

- Increased the amount individuals may spend at their own homes on behalf of a candidate before it counts against their contribution limit.
- Allows the FEC to undertake random audits when there are indications of major violations.
- Required candidates to notify the FEC within 48 hours of \$1,000 contribution received between 20 days and 48 hours prior to an election.
- Raised the threshold for reporting contributions from \$100 to \$200.

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back to Congress its recommendations within one year of the date that the bill is enacted. Authorizes the commission to hold hearings, and take necessary testimony. Introduced Feb. 26, 1985; referred to Committee on House Administration.

H.R. 1532 (Swift D-WA)
Authorizes appropriations for the FEC for FY86. Introduced Mar. 19, 1985; referred to the Committee on House Administration. Reported from the Committee Mar. 26, 1985 (H Rep. 99-28)

H.R. 1807 (Lafake D-NY)
Amends the Internal Revenue Code of 1954 to repeal the tax credit for political contributions made to political action committees. Introduced Mar. 28, 1985; referred to the Committee on Ways and Means.

H.R. 2534 (Dickinson R-AL)
Amends the Federal Election Campaign Act so as to prohibit the use of union dues for political activities. Introduced May 16, 1985; referred to Committee on House Administration.

H.R. 2844 (St. Germain D-RI)
Clean Campaign Act. Provides for public financing of general election campaigns for the House of Representatives. Provides that no candidate who is eligible for public financing may expend from his or her own personal funds or from the funds of any member of his or her immediate family an amount in excess of \$20,000. Provides that eligible candidates may not spend more than \$200,000 in the general election. Provides that eligible candidates are entitled to an initial payment of \$20,000 and additional matching payments equal to the amount of contributions received, to be paid in multiples of \$10,000. Also provides that only contributions of up to \$100 will be matched with public funds provided, however, 75% of the matchable contributions come from residents of a candidate's State. Provides for suspension of expenditure limitations for an eligible candidate under certain conditions when an opposing candidate is not eligible for public funding. And provides for additional public funds or free broadcast time to respond to negative advertisements aired by a broadcast station. Establishes a \$90,000 aggregate limitation on the amount of contributions that a House candidate can accept from PACs during a two-year election cycle. Provides that the Federal Election Commission shall be responsible for the administration and enforcement of the public financing of House candidates. Establishes in the Presidential Election Campaign Fund a separate account to be known as the House of Representatives Election Campaign Account. Introduced June 21, 1985; referred to Committees on House Administration, and Energy and Commerce.

H.R. 2906 (Grosberg R-IL)
Voter Interest Participation Act of 1985. Provides for increases in the limitations on contributions by persons other than multicandidate political committees to candidates and political committees. Provides that no limitation shall apply to contributions or expenditures by a political committee of a political party with respect to a congressional general or special election. Introduced June 27, 1985; referred jointly to the Committees on House Administration, Ways and Means, and Post Office and Civil Service.

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candidates depending on the office being sought. Appearances on news programs and public service programs shall not be considered attributable to the free broadcast time allotment of such candidate. Provides that the equal opportunities requirements of section 315 of the Communications Act of 1934 shall not be applicable in the case of the use of radio and television facilities for free broadcast time. Introduced Jan. 28, 1985; referred to Committee on House Administration.

H.R. 889 (Pease D-OH)
Amends the Internal Revenue Code of 1954 to provide a tax credit for political contributions to candidates for Congress. Provides that for individuals, there shall be allowed as a credit against taxes an amount equal to the aggregate political contributions to eligible congressional candidates made by the taxpayer during the taxable year. The maximum credit that would be allowed for a taxable year for political contributions would be \$10 for each congressional candidate (\$25 in the case of a joint return). Introduced Jan. 31, 1985; referred to Committee on Ways and Means.

H.R. 988 (Tauke R-IA)
Repeals the exemption in section 313 of the Federal Election Campaign Act of 1971 (2 U.S. Sec. 439a) which permitted certain Members of Congress to use excess campaign funds for personal purposes. Introduced Feb. 6, 1985; referred to Committee on House Administration.

H.R. 1110 (Coutter R-NY)
Amends the Federal Election Campaign Act of 1971 to establish a trust fund (known as the Multicandidate Political Committee Trust Fund) for the administration of amounts contributed to congressional candidates by nonparty political action committees. Would provide that the Secretary of the Treasury pay to each candidate receiving contributions from such committees the total amount of contributions to such candidate by all such committees in the period involved. Provides further that the Secretary in making such payments shall not identify any committees and shall not disclose the specific amount contributed by a particular committee. Provides that the FEC make public 30 days before each election and 30 days after each election, (1) the identity of each committee making contributions, (2) the identity of each candidate to whom such committee made contributions, (3) the total amount received by each candidate from all committees. Introduced Feb. 19, 1985; referred to Committee on House Administration.

H.R. 1284 (Udall D-AZ and Frenzel R-MN)
Establishes a Bipartisan Commission on Congressional Campaign Financing so as to improve the manner in which congressional campaigns are financed. Provides that the commission would be an eleven-man commission to study the existing system of campaign financing and make recommendations for improving it. Provides that two members of the commission would be chosen by the Speaker of the House, the House minority leader, the Senate majority leader, and the Senate minority leader, for a total of eight members. Provides that the Republican and Democratic National Chairmen would get one appointment each and that the eleventh person would be chosen jointly by the Senate majority leader and the Speaker of the House. Requires the commission to report

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H.R. 2923 (Watkins D-OK)

Reduces the amount from \$5,000 to \$1,000 that a PAC may contribute to a candidate in a federal election. Limits the amount to \$50,000 that a congressional candidate may receive in contributions from PACs with respect to such election. Introduced June 27, 1985; referred to Committee on House Administration.

H.R. 3724 (Carr D-MI)

Amends the Federal Election Campaign Act of 1971 to permit political committees to designate for campaign depository purposes any organization which has accounts insured by the Securities Investor Protection Corporation. Introduced Nov. 12, 1985; referred to the Committee on House Administration.

H.R. 3799 (Synar D-OK)

Amends the Federal Election Act of 1971 to change certain contribution limits concerning PACs. Provides that PACs maximum contribution limit be lowered from \$5,000 to \$1,000, while individual gift limits to PACs be raised from \$1,000 to \$1,500. Provides a further overall limit on PAC contributions to campaigns, with a limit of \$100,000 for House candidates and from \$175,000 to \$750,000 to Senate candidates, depending on the size of their state.

H.R. 3806 (Beilenson D-CA)

Amends the Federal Election Act of 1971 to provide for voluntary public financing of general House of Representative elections through a \$175 million fund every two years (assuming all 435 House races are contested). Provides participating major party nominees in general House elections with \$200,000, with additional funds made available to any participant who faces a non-participating nominee who raises more than \$200,000 in private funds.

H.J. Res. 88 (Vento D-MN)

Proposes an amendment to the Constitution of the United States relative to contributions and expenditures intended to affect congressional, presidential, and State elections. Introduced Jan. 22, 1985; referred to Committee on the Judiciary.

H.Con. Res. 149 (LaFalce D-NY)

Expresses the sense of the Congress that the President's proposal to repeal the provisions of the Internal Revenue Code which allow taxpayers to make designations of income tax payments to the Presidential Election Campaign Fund should not be enacted by the Congress. Introduced June 21, 1985; referred to Committees on Ways and Means, and House Administration.

S. 59 (Goldwater R-AZ)

Amends the Federal Election Campaign Act of 1971 to limit excessive expenditures and to provide for more timely and complete public reporting of campaign gifts and spending. Provides for spending limits according to the number of voting age citizens in House congressional races and according to the dollar ceiling in presidential campaigns. For Senate candidates, spending is to be limited to 12 cents for each voting age citizen in primary elections and 22 cents in the general election. For House candidates, the bill proposes a base ceiling of \$150,000 for primary elections and \$250,000 for general elections. For House candidates, campaign spending is to be limited to \$100,000 in each primary es-

penditure ceiling is applicable only in States where there is a single Representative. Provides that presidential election campaigns run for a period of six weeks held prior to the general election. Provides that party conventions cannot be held until Labor Day and that election campaigns cannot start until two weeks later. Provides for a ceiling of \$5,000 per campaign for independent spending made in an election year. Provides for the repeal of public financing of presidential elections. Introduced Jan. 3, 1985; referred to the Senate Rules and Administration Committee.

S. 297 (Boren D-OK)

Amends the Federal Election Campaign Act of 1971 to change certain contribution limits for congressional elections. Limits to \$75,000 the amount a House candidate can accept from all PACs in each election cycle. Limits Senate candidates to an amount that would vary with the population of their State from a low of \$75,000 to a high of \$500,000. Raises the PAC limitation to \$100,000 if two or more candidates qualify for the ballot in the primary and general election. Allows an additional \$25,000 in PAC money in the event of a Senate or House runoff election. Increases individual contributions limitations to Federal office candidates from \$1,000 to \$2,500 per election. Introduced Jan. 24, 1985; referred to Committee on Rules and Administration.

S. 320 (Denton D-AL et al.)

Neutrality in Federal Expenditures Act. Prohibits any entity receiving federal funds and exempt from taxation under 26 U.S.C. Sec. 501(c)(3) from using such funds for political advocacy. Introduced Jan. 29, 1985; referred to Committee on the Judiciary.

S. 323 (Proxmire D-WY)

Clean Campaign Act of 1985. Amends the Federal Election Campaign Act of 1971 to limit contributions by nonparty multicandidate political committees in Senatorial campaigns. Would also provide for public financing of general election campaigns for Senatorial campaigns. Provides that eligible Senatorial candidates may not make expenditures in a campaign in excess of \$600,000 plus 5 cents multiplied by the voting age population in the State. Provides that individual contributors making contributions to qualified Senatorial candidates be granted a 100% tax credit up to \$200 for individual returns (\$400 for a joint return). Provides for the suspension of expenditure limitations and reduced postal rates for qualified candidates when any candidate in the general election has not become a qualified candidate. Provides for reduced postal rates, when a total of more than \$5,000 in independent expenditures is made in opposition to, or on behalf of, an opponent of a qualified candidate. Provides for certification by the FEC of the eligibility of candidates as well as for the examination and audit by the FEC of the campaign accounts of 10% of the qualified candidates. Introduced Jan. 31, 1985; referred to Committee on Finance.

S. 471 (Dodd D-CN and Melcher D-MT)

Amends the Federal Election Campaign Act of 1971 and the Internal Revenue Code of 1954 to provide a 100% tax credit for small contributions to Senatorial candidates who agree to abide by an overall spending limit and a limit on the use of personal funds. Provides that in order for a candidate to receive tax creditable contributions, the candidate must have received threshold contribu-

reported from the Committee on Rules and Administration (S Rep. 99-43) May 9, 1985; placed on calendar.

S. 1563 (Helms R-NH)
Amends the Federal Election Campaign Act of 1971 to prohibit the use of compulsory union dues for political purposes. Introduced Aug. 1, 1985; referred to Committee on Rules and Administration.

S. 1787 (Mathias R-MD et al.)
Senatorial Election Campaign Act. Amends the Federal Election Campaign Act of 1971 to provide for public financing of Senate general election campaigns. Provides that any major or minor party candidate would be eligible for public financing if at least two major party candidates or a major party and a minor party qualified for the general election ballot. Provides further that candidates other than a major party or minor party candidate could receive postelection funding if they received 5% or more of the vote. Provides for various expenditure limitations depending on the voting age population of the State.

Provides that, when opponents elect not to accept public funding, eligible candidates would be entitled to additional public funds in an amount equal to the amount by which opponents exceed the expenditure limitations. Provides for a voluntary tax check-off on individual tax returns to fund the public financing. Introduced Oct. 24, 1985; referred to the Committee on Rules and Administration.

S. 1789 (Kerry D-MA)
Deficit Reduction Campaign Finance Reform Act. Amends the Federal Election Campaign Act of 1971 to provide for the public financing of senatorial general election campaigns by eliminating the tax credit for political contributions and applying the forgoing revenue to the Senate general election campaign fund.

Provides that any major or minor party candidate would be eligible to receive public financing for a general election campaign. Provides that eligible candidates would be subject to certain expenditure limitations which would be calculated according to the voting age population of the states. Provides further that eligible candidates whose opponents have elected not to receive public financing would be entitled to an additional amount of public funds which would be equal to the amount by which the opponents exceeded the expenditure limitations.

Provides that the Secretary of the Treasury shall maintain an account known as the Senate General Election Campaign Fund. Requires that the Secretary shall deposit into such fund an amount equal to \$265,000,000 for each fiscal year. Introduced Oct. 24, 1985; referred to the Committee on Finance.

S. 1806 (Boren et al.)
Campaign Finance Reform Act of 1985. Amends the Federal Election Campaign Act of 1971 to change certain contribution limitation provisions. Amends the Communications Act of 1934 concerning the broadcasting of certain material regarding federal office candidates.

Provides that House candidates are limited to \$100,000 which can be accepted from all PACs in each election cycle. Provides that Senate candidates are limited to amounts of aggregate contributions from PACs which would vary from State

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tions of 5% of the expenditure limitation for the State which is determined by a formula using the State's voting age population. Provides that individual contributors making contributions to qualified Senatorial candidates be granted a 100% tax credit up to \$200 for individual returns (\$400 for a joint return). Provides for the suspension of expenditure limitations and reduced postal rates for qualified candidates when any candidate in the general election has not become a qualified candidate. Provides for reduced postal rates, when a total of more than \$5,000 in independent expenditures is made in opposition to, or on behalf of, an opponent of a qualified candidate. Provides for certification by the FEC of the eligibility of candidates as well as for the examination and audits by the FEC of the campaign accounts of 10% of the qualified candidates. Introduced Jan. 31, 1985; referred to Committee on Finance.

S. 528 (Rudman R-NH et al.)
Establishes a Bipartisan Commission on Congressional Campaign Financing so as to improve the manner in which congressional campaigns are financed. Provides that the commission would be an eleven-man commission to study the existing system of campaign financing and make recommendations for improving it. Provides that two members of the commission would be chosen by the Speaker of the House, the House minority leader, the Senate majority leader, and the Senate minority leader, for a total of eight members. Provides that the Republican and Democratic National Chairmen would get one appointment each and that the eleventh person would be chosen jointly by the Senate majority leader and the Speaker of the House. Requires the commission to report back to Congress its recommendations within one year of the date that the bill is enacted. Authorizes the commission to hold hearings, and take necessary testimony. Introduced Feb. 28, 1985; referred to Committee on Governmental Affairs.

S. 1072 (Gorton R-WA)
Amends the Federal Election Campaign Act of 1971 to increase individual and party participation. Provides for the adjustment of contribution limits. Allows candidates to control expenditures made on their behalf. Provides for indexing of individual and multicandidate committee contribution limits. Increases party contribution limits. Provides that candidates for the Senate may spend up to \$50,000 from their own personal funds in States with one or two congressional districts. In States with three or more congressional districts, candidates for the Senate may spend up to \$100,000. Provides that candidates for the House of Representatives may spend up to \$50,000 from their own personal funds. Provides that, if candidates were to exceed such limitations on expenditures from their personal funds, the contribution limitations on contributions to the opposing candidate or candidates would be tripled. Provides that individuals who contribute to a multicandidate political committee (PAC) on an installment basis under a payroll deduction plan may require that up to 75% of such contributions since the last general election be contributed to a specified candidate or candidates; provides that such designation is to be made 45 days prior to the election. Introduced May 6, 1985; referred to Committee on Rules and Administration.

S. 1117 (Mathias R-MD)
Authorizes appropriations for the Federal Election Commission for FY86.

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to State depending on population. For senatorial candidates, the lowest amount would be \$175,000 (\$200,000 if two or more candidates qualify for the ballot in the primary and general election), and the highest amount would be \$750,000 (based on the formula $\$35,000 \times \text{the number of congressional districts}$).

Allows candidates to be provided equal time from broadcasting stations when candidates are subject to negative advertisements by an independent expenditure by a political action committee. Introduced Oct. 29, 1985, referred to the Committee on Rules and Administration.

Appendix 6B

Money and Politics:

Soft Money — A Loophole For The '80s

The Center for Responsive Politics was founded in January, 1983, to help rebuild public confidence in Congress. The Center accomplishes its mission by probing issues pertinent to legislative effectiveness, publishing information necessary to stimulate reform and providing a forum for the open discussion of the inner workings of Congress. This third project undertaken by the Center examines the impact of a new kind of political money used to bypass federal limits on political contributions.

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Introduction

Big money is making a comeback in American politics.

Since 1980, the national Democratic and Republican parties have received tens of millions of dollars — the exact amount will never be known — from wealthy individuals, corporations and labor unions. These contributions are legal only because the parties claim the money is being used to support state and local activities. The money helps pay routine operating costs of these state and local parties, enabling those organizations to spend their overhead funds to help support federal election activities. Because these activities indirectly support federal candidates, the Center believes that these funds should be regulated by federal law.

This multi-million dollar torrent — known as "soft money" in political jargon — has escaped public attention because the money spills through a loophole in the federal campaign law and trickles into the states. There, the money is further protected from the public eye by a hodge-podge of state campaign finance laws. For example, although the Federal Election Campaign Act sets a \$20,000 annual limit on gifts by individuals to national party committees, several wealthy individuals wrote checks for as much as \$100,000 in a style of "fatcat" contributing that recalls an earlier political era. And while federal law also forbids contributions by corporations and labor unions, both national parties accepted such contributions. Moreover, soft money contributions are solicited by national party officials from donors who contribute not to help state and local office seekers, but to shore up state support for federal candidates.

But it was not supposed to be this way. In the late 1970s, there was a sincere effort to bolster voter participation and activity by revitalizing state and local parties. As part of this effort, Congress passed legislation to better define the role these parties should play in federal elections. Rather than build "grassroots" organizations, however, these new laws only alerted national parties to ways they could avoid disclosure and exceed federal limits on campaign money. Rather than actually strengthening state and local parties, soft money has further centralized fundraising at the national level.

The Center for Responsive Politics reviewed articles, interviewed campaign finance experts and examined state financial disclosure reports. The result is this monograph, a primer on how weak federal enforcement and varying state laws frustrate, rather than accommodate, public disclosure requirements. The monograph also reveals how soft money expenditures are targeted to aid federal office seekers and explains how soft money's unchecked use threatens to undermine the campaign finance disclosure laws enacted during the post-Watergate period of the 1970s.

I.

The Origins of Soft Money

Lawyers for the national political parties claim the federal law's definition of "contribution" and "expenditure" as the legal basis for soft money. The federal law's provisions clearly cover money raised and spent to influence the outcome of a federal election. Thus, party lawyers point out, money not raised for federal purposes is money not subject to the federal law's requirements.

The term "soft money," used to describe funds raised by national party committees for "non-federal" committees, was actually borrowed from a term used to describe another kind of political money. Before, soft money referred to corporate and labor treasury funds which can be used to support the administrative and fundraising expenses of a voluntary political fund — or, as it is more popularly known, a "political action committee." The term, soft money, however, evolved into an umbrella term describing any political money not regulated by federal law; conversely, money subject to federal limits, prohibitions and disclosure requirements is called "hard money."

An amendment added to a campaign law enacted by Congress in 1979 became the inadvertent impetus for soft money. The amendment had its origins in the 1976 presidential election, unique in U.S. political history because it was the first one ever paid for with public funds. Democrat Jimmy Carter and Republican Gerald Ford each received \$21.8 million in U.S. Treasury funds at the outset of their campaigns. While neither candidate could accept private contributions, the national parties could make "coordinated expenditures" on their behalf and each state and local party committee could spend up to \$1,000 for election-related activities.

But the \$1,000 was virtually meaningless at the state and local level. Most of these committees made no federal expenditures, because they expected the national campaigns to foot the bill for their traditional activities. Instead, both presidential candidates hoarded their cash for national media advertising and only a few dollars trickled down to the state and local party committees. Jimmy Carter's campaign allotted \$4.1 million and Gerald Ford's campaign allotted \$2.8 million for state activity. Thus, the familiar sights of campaign past — the local rallies, the yard signs or lapel buttons — all but faded from the political landscape. Washington *Post* reporter David Broder remarked "In many big city neighborhoods and in most small towns there was nothing to

beneficiaries of VIVA '84 was President Reagan, but the organization was being chartered at the state level because "we can take a check for \$1 million. We can take corporate checks." Similarly, Frank Holman, Director of the New Jersey Republican Party, told a reporter his party had a budget of \$680,000 for 1984, "but he pointed out no local candidates are running so all party-building expenditures will help federal candidates, including President Reagan." Rather than rebuild state and local parties, soft money often makes these organizations mere appendages to the interests of the national parties.

suggest America was choosing a president — no local headquarters, no banners, no bumperstickers, no buttons and almost no volunteer activity."¹¹

Local party officials were angered by the situation. "These are the trimmings of a campaign that fuel local enthusiasm," said Thomas Keen, Gerald Ford's New Jersey Campaign Director. "And when somebody wants to go door-to-door with campaign literature and can't get it, the situation certainly doesn't help our image."¹²

Responding to these complaints, Congress adopted numerous "technical" changes to the Federal Election Campaign Act of 1979, adding provisions to revive the role of state and local parties in presidential and congressional elections. These amendments allow state and local party committees to make unlimited expenditures for election related "party building" and "grass-roots" activities benefiting a party's entire slate of local, state and federal candidates.

The amendments, now Section 431 (9) (B) (viii) and (ix) of the Federal Election Campaign Act, stipulate no state and local party expenditures can be made for media advertising — such as radio, television and newspaper ads, billboards, commercially generated direct mail or any other public communications method — and, to the extent the expenditures benefit federal officeholders, a proportionate share of the money must be raised and spent in accordance with the federal law's limits. Further regulations promulgated by the Federal Election Commission (11 CFR 100.71(b) and (b)) added an additional restriction: none of the money used for this purpose by state and local party committees can come from their national party committees.

But after the 1979 amendments took effect on January 8, 1980, Democratic and Republican lawyers quickly found that they could help state and local committees take full advantage of their unlimited spending authority without disturbing the FEC's regulatory ban on national party funds. While regulation prohibits direct contributions by national parties to the federal election accounts of their state and local affiliates, nothing in law or regulation prohibits national party donations to defray the overhead or even state election activity expenses of state and local parties. To date, in spite of its growing use by parties and candidates, the Federal Election Commission (FEC) has not issued a definitive ruling on the collection and distribution of "non-federal" funds by national parties.¹³

Once soft money distribution systems were created, national parties were able to collect and transfer unlimited amounts of money to their state and local affiliates and in return, these affiliates could spend whatever other money they raised on election activity — especially those activities benefiting federal candidates.

The state parties themselves well understand the purpose of the money. In 1984, the executive director of the Florida State Republican Party, Rocky Pennington, established a group to mobilize Spanish voters known as VIVA '84. Pennington was quite candid in admitting one of the intended

2.

1980: Soft Money Comes of Age

Soft money became a potent, multi-million dollar factor in the presidential elections as the Republican party collected large donations from sources previously restrained by federal law. This national fundraising effort, combined with state and local collections for their "party-building" and grassroots coffers, provided Ronald Reagan with advantages the Democratic National Committee (DNC) was unable to muster for Jimmy Carter.

This is not surprising when one considers the Democratic effort was uncoordinated and poorly planned, while Republican strategists had begun building their soft money organization just as the soft money amendments took effect. In early 1980, former Republican finance director Robert Perkins suggested to Ronald Reagan's campaign field director William Timmons that soft money could be used to underwrite a massive Republican effort. When Timmons agreed, the national effort got underway.

The best estimates are that the Republican National Committee (RNC) raised \$9 million in soft money at the national level, while helping their state and local affiliates to collect another \$6 million. Hence, \$15 million was collected and spent on "party building" activities. This was a considerable amount, more than half the \$29.4 million public fund allotment given to the 1980 presidential candidates. In contrast, the Democrats raised only about \$4 million in soft money.⁸

The GOP's soft money operation, called the Victory Alliance '80 and directed from the Republican National Committee's headquarters in Washington, established a network of soft money organizations in key states. This hierarchical organization worked exceptionally well because it enabled each state chapter to tailor their financial activities to match their own state's campaign finance laws.

Virtually all of the Republican's soft money was collected by a network of individuals working with the Victory Fund '80 and other national and local officials. This network included Tennessee banker Ted Welch, Texas oilman Robert Monbache and Hollywood booking agent Charles Wick. Wick and his wife Mary Jane were able to raise over \$10 million in hard and soft money for Reagan and various other committees.⁹ Another top GOP fundraiser was

future Labor Secretary Raymond Donovan who solicited gifts in New Jersey, New York and throughout New England.

Although a primary goal of the Presidential Election Campaign Fund Act was to relieve candidates from focusing most of their energies on fundraising, Reagan made personal appearances at several soft money fundraisers, including two Texas state party events that were part of a three million dollar statewide effort. Reagan also hosted parties at Westford, a Virginia country estate that he used during and after the campaign to reward major donors and attract potential donors.

Perkins oversaw the day-to-day operations on a part-time basis from his office in the Republican National Committee headquarters. From there, he sought contributions by informing donors that they could bypass federal limits by contributing to a soft money account. As an unnamed GOP fundraiser told reporter Elizabeth Drew, "the myth is that there is a limit."¹⁰ Perkins helped national Republican officials in collecting both hard and soft money and making sure it went to those states where the Republican's need was greatest. "We picked out the states that needed the money, identified money from major contributors and funnelled it into those states," he said.¹¹

Illinois was such a state. During the last week of the campaign, when Reagan's sweeping victory over Carter was not yet assured and polls suggested the Republicans might be able to win a majority in the Senate, GOP strategists decided Illinois — a key electoral state with a hotly contested Senate race — could benefit from soft money expenditures.

"We can take a check for \$1 million. We can take corporate checks."

— Rocky Pennington, Chairman of the Florida Republican Party

Since Illinois law permits unrestricted and unlimited corporate, labor and individual donations, contributions to the state Republican party appeared from as far away as Virginia, Texas, New Jersey and California. Among the nationally orchestrated gifts were checks from two giant California agribusiness companies — Saylor Land Company and the J.G. Boswell Corporation, which sent \$25,000 and \$10,000 respectively — and \$10,000 from the Marriott Corporation in Bethesda, Maryland.¹²

Similar out-of-state cash infusions reached GOP state party coffers in California, where incumbent Democrat Alan Cranston survived Republican Paul Gann's challenge; Indiana, where GOP challenger Dan Quayle unseated three-term incumbent Birch Bayh; Michigan, where there was no Senate race, but polls correctly predicted Reagan could take this traditionally Democratic state and its 21 electoral votes; and Missouri, where incumbent Democrat Thomas Eagleton narrowly survived a challenge from GOP rival Gene McNary.¹¹

3.

1982: Soft Money Refined

The success of soft money in 1980 guaranteed its use in 1982. Democrats, keenly aware of the Republican head start, undertook an expanded soft money operation of their own. 1982 also gave the Democratic and Republican parties the chance to use their soft money operation in another environment. The 1980 GOP effort had been undertaken in the context of the federal law's specific application to the presidential elections; now, both parties were ready to use soft money to support their congressional efforts.

Both Republicans and Democrats refined and expanded their soft money operations as much as possible. At this point, the legal distinction the parties' lawyers made between "federal" and "non-federal" money became very useful. If non-federal money was not subject to federal limits, there was nothing preventing a party from urging contributors to deposit their money to a national party's "non-federal" account.

Depositing money to a national non-federal account had several advantages over previous soft money operations. First, such accounts could act as a central financial clearinghouse for the money, allowing national party officials even greater control over the money. Second, these accounts could give contributors more options by allowing them to deposit the money directly to several state parties or to a few single accounts. Finally, the non-federal accounts were more convenient to the parties because they no longer had to send back checks from unions, corporations or individuals who had exceeded the federal limits. Instead, they could just deposit the questionable checks into the non-federal account and send the donor a letter explaining what had been done and adding that they can request a refund if they disagreed with the disposition of the money.¹²

1982 also saw both parties using soft money to help subsidize a series of "party generic" television commercials. Although there had been some experiments with these television spots as early as 1980, both parties mounted a comprehensive effort using a mixture of hard and soft funds. And although some party officials publicly claimed these advertisements were designed to aid both federal and local candidates, others, such as Republican fundraiser Paul Dietrich, were quite blunt about the purpose of the commercials.

*"So we have a little dance which
we dance around the law in a
way that never breaks the law
but breaks the spirit of
the law, but we don't agree
with the law anyway."*

— Paul Dietrich, former director
Fund for a Conservative Majority

If ninety per cent of the candidates [on a district ballot] are for state and local office, we can pay for ninety per cent of the ad with corporate contributions — even though the ads are aimed at federal campaigns. So essentially, it just wipes out the purpose of the FEC. The law just describes what you can't do. The T.V. commercials will never be allocated to a federal candidate, or if so, it will only be a pittance. If you look up a congressman's report, you won't be able to tell that we had commercials pounding, pounding into his district. And it is perfectly legal — or within the letter of the law. So we have a little dance which we dance around the law in a way that never breaks the letter but breaks the spirit of the law, but we don't agree with the law anyway.¹¹

Because the law prohibits direct soft money subsidies to be used for media purposes, the parties found indirect ways to produce and air the commercials. Since much of the national transfers of non-federal money subsidizes state and local operations, these committees can use their own money to air the commercials in their local markets.

Although federal law prohibits direct use of soft money accounts for advertising, FEC opinions have enabled parties to use other accounts to finance "party building" commercials. Under federal law if a television commercial shows, mentions or quotes any federal candidates or symbols of federal office, such as the White House or the Capitol, then those advertisements are subject to federal rules and must be disclosed. But the FEC has ruled that ads using party symbols, such as a donkey or elephant, or one that discusses "general" issues, can be considered "party building" in nature and can be financed out of a state party's operating account. So a national party can use non-federal funds to produce a "party generic" television spot, then transfer still more non-federal funds or simply let state and local organizations use their own funds to run the commercial, thereby avoiding federal disclosure.

For example, in 1984, the Republican Party submitted a commercial script to the FEC requesting a ruling on how they should report the money used to produce and air the spot. The script would have shown and named presidential candidate Gary Hart, while attacking his campaign theme of "new ideas" and urging viewers to "vote Republican." The FEC ruled such an advertisement was designed to influence the presidential race, so all costs related to such a commercial would be subject to federal disclosure and limits. But the FEC suggested that a different script which does not identify "any specific candidate or office" could be reported solely as "operating expenditures" because that commercial would be "party building" in nature. Thus, a commercial attacking Hart's "new ideas" theme by having an announcer say "the Democrats say they are the party of new ideas, but all they offer is the same old line," might have been acceptable.¹²

In 1982, however, parties were still uncertain about how to finance their advertising efforts, so they often combined federal and non-federal funds to finance the commercials. For example, the Democrats produced a "generic" ad showing an elephant smashing china plates with specific issues written all over them, while an announcer told viewers the Republicans "have made a mess of things. Now they want to throw their weight around our state." The Democrats determined one-fourth of the plates depicted "federal" issues, such as Social Security, while three-fourths depicted "non-federal" issues, hence Democrats used hard money to pay for 25 percent and soft money to pay for 75 percent of the production costs. Republicans also produced a series of commercials with both federal and non-federal money using the theme "Republicans are beginning to make things better."

Even though these commercials were supposedly non-federal in content, state and local parties paid for extensive runs in tight federal races. Democrats bombarded House Minority Leader Robert Michel's congressional district in Illinois with "generic" ads. In California, where a Senate seat, several House seats and a governorship were all hotly contested, several Republican-affiliated state committees ran several "generic" ads.¹³

4.

1983: Washington State — A Soft Money Proving Ground

On November 8, 1983, a special primary was held in Washington state to fill the Senate seat left vacant by Henry (Scoop) Jackson's sudden death. Besides the Senate contest there was only a smattering of local and county races and Republicans had candidates in only twenty of those elections. The challenge — successfully met by both parties — was to steer their "non-federal" expenditures around the federal restrictions, even in a case where the only statewide contest was a federal election.

Republicans nominated former Governor Dan Evans and Democrats nominated U.S. Representative Mike Lowry in a special election. Both candidates had only six weeks before the general election — but in those six weeks they raised and spent over \$2.7 million.

Evans, the winner, raised over \$1.9 million and spent almost \$1.8 million. His campaign received the federal maximum from the national party committees — \$23,497 from the Republican National Committee and \$243,000 from the National Republican Senate Committee. Lowry raised and spent \$973,235 and received only \$12,095 from the Democratic National Committee and \$206,793 from the Democratic Senatorial Campaign Committee.¹²

*Mitch Daniels of the National
Republican Senatorial Campaign
Committee urged Washington
state Republican leaders to
help candidate Dan Evans
because 'the stakes for
which we are playing are
so high.'*

But these amounts do not reflect the full amounts raised and spent on Evans' and Lowry's behalf. Reports filed with the Washington State Public Disclosure Commission reveal soft money transfers between the national and state parties. The DNC sent \$10,000 and \$20,000 gifts to the Washington Democratic Party. Significantly, the \$20,000 check was accompanied by a letter signed by DNC deputy director Michael Steed, explaining the money came from "our corporate non-federal account maintained for use in connection with state and local elections in states where such funding is permissible." Similarly, the Washington Republican Party received a total of \$67,000 from the RNC of which \$22,000 came from a soft money account known as the Republican National State Elections Committee.¹³

Yet in spite of the parties' arguments, the pattern of contributions and spending in Washington state suggests the money was indeed being used to subsidize one set of operations, allowing the state parties to finance other operations influencing the federal race. For example, the timing of the contributions suggests an intent to influence. Prior to Senator Jackson's death in early September, the October 11 primary was for local and non-partisan races only. But most of the non-federal transfers — with the exception of the mailing list money — were made after the state government decided to hold a special election to fill the Senate seat.¹⁴

Further, the actions of party officials themselves also suggests the dominance of the Senate race. A Seattle reporter who examined finance reports and interviewed several party officials estimated some \$450,000 in non-federal funds were raised and spent by national, state and local parties on election activity. The reporter noted this was a large sum of money for Washington state, but the amount was not surprising since the Washington Senate race was the only federal election for 1983 and both parties were anxious to win.¹⁵ Similarly, state and local Republican leaders attended a conference in mid-September to rally greater party support behind candidate Evans. A featured speaker at the event was the Director of the National Republican Senatorial Campaign Committee (NRS), Mitch Daniels, who urged state and local leaders to work on Evans' behalf because "the stakes for which we are playing are so high."¹⁶

5.

1984: Soft Money Unbound

By the beginning of the 1984 election year, soft money operations had become a permanent fixture at both national party headquarters. The Democrats, however, burned by the pro-Reagan effort of 1980, expanded their operation with a vengeance. Overall, both parties tried to raise as much as \$40 or \$50 million in non-federal funds.

Much of the Democratic soft money effort was organized around the presidential campaign. After Walter Mondale captured the party nomination, his campaign finance managers stepped into key financial management roles at the DNC — positions that gave them control over soft money operations. Tim Finchem, Mondale's political finance advisor, ran the DNC's Victory Fund. The Victory Fund was designed to generate an additional \$20 to \$25 million to indirectly benefit the presidential ticket. Altogether, Finchem planned to raise \$30 or more million to assist Democratic candidates in federal, state and local races.¹⁴

In a manner similar to the Reagan effort of 1980, Democrats also tried to create their own contributor network to obtain both hard and soft money. In one case, potential donors were invited to private meetings held during the Democratic Convention in San Francisco. One guest interviewed by the Center was told not to worry about the federal limit, instead, he only needed to decide how much he wanted to give and someone would instruct him on how to make out the checks.

Democrats also established a committee, Americans for Mondale, to raise soft money through a number of appeals. Though federal law states soft money funds must benefit primarily state and local candidates, Americans for Mondale used the federal candidates' name to attract smaller contributors. For example, the committee found volunteers to sponsor a number of fundraising parties tied into a half-hour television program featuring Walter Mondale. In another example, the Committee sent a solicitation letter "signed" by Geraldine Ferraro, telling potential contributors, "Although presidential campaigns are publicly funded, a critical advantage will go to the side whose party committees can raise a larger war chest for media campaigns, voter registration and get-out-the-vote efforts." The letter's

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response card left little doubt about who was the true beneficiary of the party's soft money expenditures: "Dear Gerry, count on me! I want to help you and Fritz Mondale defeat Reagan Bush and the Republican party."¹⁵

Republicans were so flush with money in 1984, the National Committee itself mounted no special efforts. Without trying, the National Republican State Elections Committee gathered about \$5 million. However, Republicans did maintain a national network of affiliated organizations to raise soft money. Joe Rogers directed the 1984 version of the Victory Alliance and he formed a second organization, Leadership '84, to collect, by his own estimates, as much as \$14 to \$19 million — though some say he raised far more than that.¹⁶

**New Jersey Republican leader
Frank Holman pointed out
that no local candidates
are running, so all the
"party building" expenditures
will help Federal candidates,
including President Reagan.**

But in addition to collecting money for distribution to state and local committees, the national parties also learned they could use their "non federal" money to support "non-partisan" voter registration programs run by tax exempt organizations. Although federal tax laws forbid partisan activity by non-profit, tax exempt groups, the law does not apply to "non-partisan" activities, such as new voter registration.

But voter registration groups can be set up to register only those voters who are likely to vote for one particular party or candidate. Hence, several millions of dollars slipped between federal election and tax laws into "non-partisan" voter registration activities sponsored by these tax exempt organizations. Republicans, especially through the Victory Alliance and Leadership '84, supported a number of groups, including one called Americans for Responsible Government. Americans for Responsible Government closed to 1980 soft money pioneer Holmes Tuttle sought to register service-oriented business executives and members of evangelical Christian organizations. Similarly, Democrats backed organizations seeking to register Hispanics, Blacks, welfare recipients and working mothers.¹⁷

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Also during 1984, the National Republican Senatorial Campaign Committee funnelled almost \$925,000 of its own funds into state coffers. Once again, a national party sent overhead funds to its state and local affiliates, permitting the non-federal parties to undertake activities on behalf of federal candidates. Still, the staff of the NRSC maintained virtually all of the money was used for state and local "party building" activities.²⁸ In reality, the NRSC's transfers faithfully fulfilled the committee's sole purpose: the support of Republican candidates for the United States Senate. Money was dispatched only to states with a Senatorial contest because, NRSC's Mitch Daniels emphasized, "We're only here for one purpose."²⁹

*One guest at the Democratic
Convention was told not to worry
about the Federal limit, instead,
he should just decide what he
wanted to give and someone
would tell him how
to make out the checks.*

Often the NRSC's contributions to finance "non-federal" political activities by state party committees neatly coincided with activities taken for the obvious benefit of the party's Senatorial candidates. For example:

- In Michigan, the state party earmarked \$35,000 to \$40,000 to air a series of radio commercials attacking incumbent Democratic Senator Carl Levin. The ads were broadcast in April, 1984, at about the same time the NRSC sent a \$40,000 "party-building" contribution to Michigan Republicans.
- In Arkansas, the NRSC sent \$40,000 to the Arkansas Victory Fund '84. Barely a week later, the Fund paid \$44,791 for a direct mail campaign aimed against incumbent Democratic Senator David Pryor.
- In West Virginia, the state party spent \$21,783 for 64 billboards throughout the state attacking Democratic candidate Jay Rockefeller. At about the same time, the NRSC sent \$21,450 to the West Virginia Republican Party.
- In Nebraska, state GOP Chairman Kermit Brashear admitted his committee would provide GOP Senatorial challenger Nancy Hoch with \$150,000 to \$190,000 worth of campaign services to be financed by the RNC.

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and the NRSC. State disclosure reports did show the state committee in fact received \$186,000 from the two national party committees. Brashear told the Omaha *World-Herald* the national party funds were inappropriate in the Senate contest, but the donations would allow the state party to use its own money to influence the federal election. In effect, the national party money was used to pay the state committee's operating costs, enabling the state party to put its rent money and operating funds into the federal campaign.³⁰

In the final days of the 1984 campaign, Democrats found the NRSC's "party-building" gifts lurking in several state disclosure reports, prompting party chairman Charles Manatt to label the NRSC "a rogue elephant hemorrhaging money in all directions," while he also threatened a formal FEC complaint. But Manatt was instead persuaded to permit an agreement whereby both parties promised to notify each other 48 hours before transferring funds to a state committee and to adhere strictly to federal laws and regulations in their use of "non-federal" funds. Attached to the agreement was a "memorandum of understanding" which reviewed the pertinent laws.³¹

While the agreement was referred to in some quarters as "mutually verifiable spending freeze," the pact was an amazing document. What the agreement really did was allow the parties to continue raising and spending soft money in accordance with their own interpretation of the law, thus sparing the FEC from involvement in the issue, effectively putting the major party imprimaturs on their soft money practices.

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6.

The Dance of Disclosure

Monitoring soft money accounts and their use is difficult because the funds are not disclosed in one place, or on occasion, not disclosed at all, while those who use the money have given conflicting reports. Though party officials announced programs to raise some \$400 or \$500 million in 1984, they only admit to spending \$10 million apiece. Depending on whom you believe, the Democratic National Committee raised either \$30 million or less than \$10 million in soft money in 1984. DNC deputy director Michael Steed gave the higher estimate at a post-election gathering of political consultants. DNC press spokesman Terry Michael said Steed's figure was incorrect, that only \$9.4 million was collected.³⁰

Nevertheless, the true figure can never be verified because the DNC refuses to submit its soft money ledgers to public scrutiny. Yet party officials insist every penny is disclosed, saving reporters and researchers can dig the data out of the 50 state capitals. But it is an impossible task. Some states require no disclosure, others require it only on an annual basis while still others do not apply their disclosure laws to political parties. Ed Zuckerman, editor of *PAC's and Lobby's*, a Washington based newsletter, visited a few state capitals for the information and said his experience was "a magical mystery tour, but I lived to tell about it."³¹

In Virginia, Zuckerman had difficulty seeing the state disclosure reports. "They wanted to deny access to their records because I wasn't a registered voter there," he said. "But they changed their minds because I had press credentials."³²

Zuckerman uncovered the existence of at least five non-federal DNC accounts: the Non-Federal General, Non-Federal Individual, Non-Federal Corporate, Non-Federal Labor and Non-Federal #1. The Non-Federal General Account apparently held small gifts derived from the party's direct mail appeal for soft money and the #1 Account limited its activity within the state of Michigan apparently to circumvent a unique feature of Michigan election law, requiring full disclosure by out-of-state political committees.

Donors to the DNC's Individual Account were filed with the Pennsylvania Bureau of Elections, apparently by mistake. The Pennsylvania file listed all donors and amounts received between July 6 and October 26, 1984, detailing

contributions of \$100,000 each from Minnesota department store heir Mark Dayton, former IBM Chairman Thomas Watson and California venture capitalist Stuart Muddaw. Other large gifts came from New York investment banker Herbert Allen (\$75,000), Florida lawyer and party fundraiser William Crotty (\$50,000) and \$25,000 gifts from former San Diego Padres manager Ballard Smith, Texas oilman Lucien Flournoy and Dreyfus Corporation Chairman Howard Stein.³³

Dayton, who spent \$7 million in personal funds during his unsuccessful 1982 bid for a Senate seat, said he sent his gift at the request of a Mondale campaign aide he would not identify. "The purpose [of the contribution]," Dayton told the *Minneapolis Star and Tribune*, "was to assist the Mondale campaign."³⁴

The DNC's Corporate Account was disclosed in California, listing only a fraction of the amount actually given. In a ruling from the state's Fair Campaign Practices Commission, the DNC was required to disclose every corporate contributor to the account but the DNC only had to disclose the portion actually spent in the state. Some corporations listed did not make political contributions to the DNC, rather, they made payments for hotel rooms in San Francisco during the party's nominating convention. Inexplicably, the hotel room deposits wound up in the party's soft money account.

The DNC's Labor Account, found in Michigan, detailed contributions totaling more than \$1.8 million. Significantly, nearly all the money was drawn from union-sponsored PAC's — not treasury funds, though Michigan does permit direct union contributions. The largest gifts came from the United Auto Workers Voluntary Community Action Program (UAW-VCAP) for \$250,000 and the United Steelworkers of American Political Action Fund, donating \$316,700.³⁵

The Republicans were willing to open their books for one account, the Republican National State Elections Committee to the media. The vast majority of contributors were from small firms or shops who wrote their checks on a company account. But there were several large donations, including \$45,000 from Beverly Hills perfumer Fred Hayman, \$20,000 from Mesa Petroleum Chairman T. Boone Pickens, and \$20,000 from Dallas builder Trammel Crow.

The soft money receipts also included dozens of \$10,000 and \$20,000 corporate gifts. These gifts came mostly from corporate treasuries to buy \$10,000-a-year memberships in the RNC's Eagle Club for lobbyists and executives. After making these soft money contributions, executives and lobbyists could instruct their PAC's to make additional "hard money" contributions to the RNC.³⁶

Though the Republicans did produce their books on the State Elections Account, the Center's efforts to locate and examine the books for the multi-million dollar Victory Alliance '84 and Leadership '84 Accounts proved futile.

7.

A Guide to State Campaign Finance Requirements

In researching this monograph, the Center for Responsive Politics contacted campaign finance officers across the nation to gather disclosure reports. In the process, the uneven requirements and the complexities of state campaign finance laws became obvious. Moreover, the uneven requirements and disclosure provisions can actually be an aid to national parties using state coffers to influence federal elections.

Although all states are ripe for any nationally orchestrated soft money effort, those states with weaker campaign finance laws provide even more opportunity for candidates and fundraisers. Currently 27 states — including some the nation's most populous — permit unlimited contributions by individuals. Eighteen states allow unlimited direct contributions from labor and corporate treasuries. The 27 states without individual limits account for 54 Senate seats, 285 House seats and 335 electoral votes — a significant majority in each category. Those eighteen states permitting direct union and corporate money account for 36 Senate seats, 189 House seats and 195 electoral votes.⁷

But no matter what a state's limits — or lack of them — most of these states require some kind of disclosure. Yet though disclosure is supposed to help inform the electorate of who gives to candidates or parties and how much they get, many state disclosure offices are wholly inadequate for the job. Some disclosure offices merely compile records, lacking the staff to look for or enforce violations. Other offices enforce incomplete statutes with loopholes allowing several kinds of contributions to slip through.

Four states — Alabama, South Carolina, Wyoming and Utah — do not require full and complete disclosure prior to an election. This defeats the central purpose of disclosure: an informed electorate.

In Hawaii, the state's Campaign Spending Commission ruled in 1984 that political committees need not disclose contributions to state office seekers because such information duplicates what candidates must disclose. The ruling means researchers must examine every disclosure report filed by every

candidate in the state of Hawaii to determine the full extent of a single committee's overall investment in the state's election.

Other states require candidates, but not political parties, to disclose. Virginia, New Jersey and Maine fall into this category, while varying interpretations of the law in Delaware and Louisiana enable the parties to avoid disclosing in those states.

When the Center requested party records from Louisiana, an official of the State Board of Ethics for Election Officials said there were no such records because the parties have interpreted state law to mean they do not have to disclose — and there is nothing her office can do about it.

The Democratic and Republican state parties claim they do not make contributions or expenditures in support or opposition of candidates, but rather that the support for Democratic and Republican candidates consists of various services, voter registration drives, surveys, voting pattern analyses, etc. This offices does not have the staff or information to disagree with their rationalization.⁸

There are still other uneven reporting requirements. Michigan, for example, has a contribution limit of \$1,700 per election to candidates and non-party committees. But political parties are subject to no such restrictions and take whatever is offered. Thus, the state Democratic Party took \$15,000 from a Lansing chapter of the United Auto Workers and \$13,300 from UAW-V-CAP in Detroit. The Michigan Republican Party was awash in large individual contributions, including \$35,000 from John McGoff, \$25,700 from Max Fischer, \$25,000 from two Amway executives and \$15,000 from real estate tycoon Alfred Taubman.⁹

In another example, while no state prohibits out-of-state contributions four states — Michigan, Nebraska, North Carolina, and Oregon — have restrictions on such gifts. Yet a determined committee could easily penetrate Michigan, the state with the most restrictive rules on such out-of-state donations. GOPAC-Michigan is a case in point.

In 1984, GOPAC-Michigan of Midland contributed \$80,000 to the Michigan Republican State Committee.¹⁰ GOPAC-Michigan is an offshoot of GOPAC, a national political action committee headed by former Delaware governor Pierre DuPont and located in Washington, D.C. The PAC had donated large sums of money to Washington state and local candidates and organizations throughout the country. Yet, GOPAC's activity is limited to non-federal contributions only, so it is unknown to the Federal Election Commission. Disclosure occurs only in those states where it is required and it is limited to the extent of GOPAC's activity within the state.

But Michigan law presented a problem: had GOPAC made the contributions directly from Washington, it would have been subject to a state law requiring an out-of-state committee to file a state report detailing all of GOPAC's contributors. Instead, GOPAC found someone in Midland willing to

erents and chair a Michigan registered PAC, limiting their disclosure to only those contributors who gave to the state affiliate.

At first, a critical observer might examine GHPAC's interest in the state as simply part of the PAC's interest in state and local politics. After all, state and local activities are part of GHPAC's charter and Michigan did have a number of badly contested state House and Senate races that could determine which party controlled both statehouses for the next two years. But a more careful examination would reveal GHPAC does have a greater interest in those states with closely competitive federal races. Michigan had a tight Senate race and several close House races in 1984. Other GHPAC contributions went to states with similarly interesting federal contests — such as New Hampshire, for example.

But most telling is GHPAC's activities on behalf of national Republicans. The PAC's ties to national Republican leaders are well known, so it was no surprise when the RNC and GHPAC began work in 1985 on a grassroots effort to rebuild the Republican party at the "local level." As part of that effort, the RNC targeted 50 "extremist" Democratic congressional districts where the voters have shown a willingness to vote for Republican candidates. GHPAC has agreed to provide sizable contributions — referred to as "venture political capital" — to county and local parties in 50 districts targeted to national Republicans.⁶

A final consideration should be raised before we leave the states: up to now, most soft money had been raised and collected by national parties and their affiliates. But their success suggests other candidates and PAC's will create their own soft money committees to collect additional monies to enhance their own causes. Two national parties have raised millions, what even a small portion of the over 2,000 federal candidates and 4,000 political action committees might raise simply boggles the mind.

8.

Recommendations

Many problems and controversies arising from the collection and distribution of soft money can be resolved through timely, complete and centralized disclosure.

Despite protests by party officials that soft money is disclosed, the simple truth is that national parties are collecting contributions from a national constituency while hiding behind a hedge ofodge of oftentimes indifferent state laws to frustrate full disclosure.

While the legal interpretations offered by party officials might have a logical ring to them, they ignore this simple proposition: A Federal Election Campaign Act which imposes a \$20,000 annual limit on individual contributions to national party committees does not contemplate or expect gifts of \$100,000 by a few wealthy individuals for off budget accounts established and maintained by national party committees.

Depositing funds in so-called "non federal" accounts is a sleight of hand labeling these funds "non federal" is a fiction. Regardless of where the money is put or what it is called, it is still money solicited by a national party organization, contributed by donors anxious to carry favor from national political leaders, while the money is used exclusively to advance the party's national goals.

On its own accord, the FEC can issue Advisory Opinions, undertake enforcement actions and promulgate regulations aimed at bringing soft money activity within the grasp of laws under its jurisdiction. Congress should also help by more clearly defining how the money can be used. A logical starting point would be to expand the definition of "contribution" and "expenditure" to include all monies flowing in and out of national party accounts.

Another step can be taken by Congress: enacting legislation to limit or disclose transfers of national party funds to and between state and local party committees. The national parties already have authority under federal law to make limited hard money contributions and "coordinated expenditures" for their congressional candidates and Congress can increase those limits if desirable. But, in lifting these party contributor ceilings, Congress should

also shut the door to the underwriting of state and local party operations in order to make other funds available for federal elections. If Congress is unable to ban or limit such transfers altogether, then legislation requiring full and immediate disclosure should be enacted.

But even if the federal government more clearly defines the use of soft money among parties, shrewd might still be possible at the state level. Ideally, there should be some standardization of state disclosure rules to standardize financial reporting and filing among all candidates and committees at the state level. The Council of State Governments and its affiliated National Governors Association can design a "Uniform Campaign Disclosure Code" in deal with these potential abuses and push for its adoption by the states. Such an undertaking would be similar to the Uniform Commercial Code established a few years ago. That code, now accepted by 49 states, standardized the 50 different state approaches to regulating commercial transactions. The success of that code should remind skeptics a Uniform Disclosure Code can work.

Finally, in order to monitor the relationship between local, state and federal spending, a central clearinghouse of campaign disclosure records should be established. A central data base of all federal and non-federal campaign finance activity would enable citizens, journalists, researchers, "watchdog organizations" and other candidates to review and even cross-reference the flow of political money in the United States. A campaign records clearinghouse would also have the advantage of enabling citizens to exercise their right to know what is being spent in both federal and non-federal races in advance of an election.

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